

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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THE NORMA MINING COMPANY,  
Appellant,  
vs.  
HUGH MACKAY,  
Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for the District  
of Arizona.

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Filed

JAN 5 - 1917

F. D. Monckton,  
Clerk.



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States for the  
District of Arizona.*

IN EQUITY.

NO. E-6—PRESCOTT.

HUGH MACKAY,

Plaintiff,

vs.

THE NORMAN MINING COMPANY,

Defendant.

**Bill of Complaint.**

To the Honorable Judge of the District Court of the  
United States for the District of Arizona.

Hugh Mackay, a citizen of the State of Colorado,  
brings this, his Bill of Complaint against the Norma  
Mining Company, a corporation, created, organized  
and existing under and by virtue of the laws of the  
State of Arizona, and a citizen of said State.

FOR A FIRST CAUSE OF ACTION ALLEGES:

I.

That the plaintiff, Hugh MacKay, is a resident and  
citizen of the State of Colorado, residing in the City  
and County of Denver, in said State.

II.

That the defendant, The Norma Mining Company,  
during all of the times and at all of the dates herein-  
after mentioned was, has since continuously been  
and now is, a corporation created, organized and ex-  
isting under and by virtue of the laws of the State  
of Arizona, and is a citizen and resident of said

State, as its statutory agent William G. Blakely, whose residence is at Kingman, in the County of Mohave, in the State of Arizona. [1\*]

### III.

That the defendant, The Norma Mining Company, for a valuable consideration, executed and delivered to the plaintiff on the 2d day of August, A. D. 1913, its promissory note for the principal sum of Sixteen Thousand Dollars (\$16,000), which said promissory note is in words and figures following, to wit:

“\$16,000.                      Denver, Colo., Aug. 2d, 1913.

Four months after date The Norma Mining Company promise to pay to the order of Hugh Mackay Sixteen Thousand Dollars at Denver, Colo.

Value received with interest at six per cent per annum.

THE NORMA MINING COMPANY,

By R. T. ROOT,

President.”

### IV.

That at the time of the delivery of said promissory note and to secure the payment of the said principal sum and interest thereon as mentioned in said note, according to the tenor thereof, the defendant, The Norma Mining Company, duly executed and delivered to the plaintiff its mortgage deed, bearing date the 2d day of August, A. D. 1913, granting, selling and conveying unto the plaintiff, his heirs and assigns, certain premises described as follows:

The following patented mining claims, situate,

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\*Page-number appearing at foot of page of original certified Transcript of Record.

lying and being in the Indian Secret Mining District, in the County of Mohave, and State of Arizona, viz: The Putman, The Review, the West Half of The Hulda, The Bonita, The Mountain Scenery, The Chief of the Hill, The Monster, The Peer, The Midway Extension, The Garfield Fraction, The Acquarius, The Grand Central, The Western View, The Lone Star, The Blind Goddess, The Desert Prospect, The Goadstick, The Norma Fraction, The G. A. R. Fraction, The Oversight, The Buckley, The Nora R., The Big Joshua, The Lookout, The Abe Lincoln, The Ellington, The Hillside, The Center, The Little Giant, The Midway, The Prince Albert, The Orient, The Squattum, The Horn Silver, The Rip Van Winkle, The African, The Norma, The Garfield, The Schaefer's Treasure, The Fraction Quartz, The Emma, The Nellie Blye, The Occident, The Junction, The G. A. R., and the Daisy Mining Claims, together with the mill and machinery therein and the different hoisting plants upon the property. [2]

## V.

That said mortgage was conditioned that if the interest or the principal of said promissory note shall not be punctually paid when the same shall become due as in said promissory note mentioned, then and in such case the principal sum of said note and the interest thereon shall be deemed and taken to be wholly due and payable and proceedings may forthwith be had for the recovery of the same, either by suit on said note or on said mortgage and note.



## VI.

That said mortgage was further conditioned that in any suit or other proceeding that may be had for the recovery of said principal sum and interest thereon, it would be lawful for the mortgagee, the plaintiff herein, his heirs, executors, administrators or assigns to include in the judgment that may be recovered reasonable attorneys' fees.

## VII.

That said mortgage was duly acknowledged and was recorded in the office of the recorder of the County of Mohave, in said State of Arizona, on the 29th day of August, A. D. 1914, in Book 4 of Mortgages at pages 172, 173 of the records in said office.

## VIII.

That the plaintiff is now the lawful owner of said promissory note and mortgage.

## IX.

That default has been made in the payment of the principal and interest of said promissory note and no part thereof has been paid.

## X.

That the sum of one thousand dollars (\$1,000.00) would be a reasonable amount to allow to plaintiff as attorneys' fees to be included in the judgment herein. [3]

## XI.

That the plaintiff has no adequate remedy at law in the premises and can have appropriate relief only in a court of equity where matters of the nature set forth in this bill are properly cognizable and relievable.

AND FOR A SECOND CAUSE OF ACTION  
ALLEGES:

I.

That the plaintiff, Hugh Mackay, is a resident and citizen of the State of Colorado, residing in the City and County of Denver in said State.

II.

That the defendant, The Norma Mining Company, during all of the times and at all of the dates herein-after mentioned was, has since continuously been and now is a corporation created, organized and existing under and by virtue of the laws of the State of Arizona and is a citizen and resident of said State, having as its stationary agent William G. Blakely, whose residence is at Kingman in the County of Mohave in the State of Arizona.

III.

That the defendant, The Norma Mining Company, for a valuable consideration, executed and delivered to the plaintiff on the 31st day of March, A. D. 1914, its two promissory notes for the aggregate principal sum of five thousand dollars (\$5000.00), which said promissory notes are in words and figures following, to wit:

“\$3500                      Denver, Colo., March 31st, 1914.

On or before May 1st, 1914, after date, it promise to pay to the order of Hugh Mackay Thirty-five Hundred Dollars at seven per cent interest per annum.

Without defalcation, for value received.

THE NORMA MINING CO.

By R. T. ROOT,  
President.” [4]

“\$1500.                      Denver, Colo., March 31st, 1914.

On or before May 1st, 1914, after date, it promise to pay to the order of Hugh Mackay Fifteen Hundred Dollars at seven per cent interest per annum.

Without defalcation, for value received.

THE NORMA MINING CO.

By R. T. ROOT,  
President.”

#### IV.

That at the time of the delivery of said notes and to secure the payment of the principal and interest thereof as therein mentioned according to their tenor, the defendant, The Norma Mining Company, duly executed and delivered to the plaintiff its Mortgage Deed, bearing date the 31st day of March, in the year one thousand nine hundred and fourteen, granting and releasing unto the said plaintiff, and to his heirs and assigns forever all the following described patented mining claims situate, lying and being in the County of Mohave and State of Arizona, to wit:

In Indian Secret Mining District in said Mohave County, Arizona, viz.: The Putman, The Review, the West Half of the Hulda, The Bonita, The Mountain Scenery, The Chief of the Hill, The Monster, The Peer, The Midway Extension, The Garfield Fraction, The Acquariuas, The Grand Central, The Western View, The Lone Star, The Blind Goddess, The Desert Prospect, The Goadstick, The Norma Fraction, The G. A. R. Fraction, The Oversight, The Buckley, The Nora R., the Big Joshua, The Lookout, The Abe Lincoln, The Ellington, The Hillside, The



Center, The Little Giant, The Midway, The Prince Albert, The Orient, The Squattum, The Horn Silver, The Rip Van Winkle, The African, The Norma, The Garfield, The Schaefer's Treasure, The Fraction Quartz, The Emma, The Nellie Blye, The Occident, The Junction, The G. A. R., and The Daisy Mining Claim; together with all the dips, spurs, and angles, and all the metals, ores, gold and silver bearing quartz, rock and earth therein, the old dump now thereon, and together with the mill and machinery therein and the different hoisting plants on the property.

V.

That said mortgage was conditioned that the defendant pay unto the plaintiff, his executors, administrators or assigns, the sum of money mentioned in said promissory notes with interest thereon and if default be made in the payment of any part thereof that the plaintiff shall have power to sell [5] the premises according to law.

VI.

That default has been made in the payment of the principal and interest of said promissory notes and no part thereof has been paid.

VII.

That the plaintiff is now the lawful owner of said promissory notes and mortgage.

VIII.

That the plaintiff has no adequate remedy at law in the premises and can have appropriate relief only in a court of equity where matters of the nature set

forth in this bill are properly cognizable and relievable.

WHEREFORE plaintiff prays:

a. That the said mortgages made by the defendant, The Norma Mining Company, to the plaintiff, Hugh Mackay, may be foreclosed as against the said defendant, the Norma Mining Company, and all persons claiming by, through or under it.

b. That an accounting be had and taken of all of the property and assets of whatsoever kind or character subject to the lien of said mortgage and that said mortgages may be decreed to be valid liens upon all property covered thereby and therein mentioned and described or intended so to be and that the amounts due and unpaid for the principal of and interest upon said promissory notes may be ascertained and determined.

c. That the plaintiff have judgment against the defendant, The Norma Mining Company in the sum of twenty-one thousand dollars (\$21,000) with interest on sixteen thousand dollars (\$16,000) from the 2d day of August, A. D. 1913, and on five thousand dollars (\$5,000) from March 31, A. D. 1913, for attorneys' fees and for costs of suit. [6]

d. That the usual decree may be made for the sale of said mortgaged premises according to law and the practice of this court and the proceeds applied in payment of the amount due to the plaintiff.

e. That the plaintiff may become a purchaser at said sale and that the purchaser be let into the possession of the said premises.

f. That the defendant, The Norma Mining Company and all persons claiming under it, subsequent to the execution of said mortgages upon said premises, either as purchasers, encumbrancers or otherwise, may be barred and foreclosed of all right, claim or equity or redemption in the said premises and every part thereof and that the defendant may be adjudged to pay any deficiency which may remain, after applying all the proceeds of the sale of said premises properly applicable thereto after the payment of the costs of foreclosure and reasonable attorneys' fees to be fixed by this Honorable Court.

g. That the defendant, The Norma Mining Company, may be required to appear and answer this Bill of Complaint according to the rules and practice of this Honorable Court.

h. And that the most gracious writ of subpoena of the United States of America be directed to the said defendant, thereby commanding it at a certain time and under certain pain therein to be specified to be and appear in this honorable court and then and there to answer all and singular the premises and stand to and abide such Order and Decree herein as to this Honorable Court shall seem meet.

A. C. BAKER,

ALEXANDER B. BAKER,

Solicitors for Plaintiff, 317 Fleming Building, Phoenix, Arizona. [7]

State of Colorado,

City and County of Denver,—ss.

Hugh Mackay, being first duly sworn, upon oath deposes and says, that he is the plaintiff named in



the foregoing Bill of Complaint; that he has read the same and knows the contents thereof and that the same is true of his own knowledge.

HUGH MACKAY.

Subscribed and sworn to before me this 28th day of December, A. D. 1914.

My Commission expires September 12, 1917.

[Seal]

RENA A. WOLZ,

Notary Public.

[Endorsements]: No. E-6 (Prescott). The District Court of the United States for the District of Arizona. Hugh Mackay, Plaintiff, vs. Norma Mining Company, Defendant. In Equity Bill of Complaint. Filed Jan. 9, 1915, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. Baker & Baker, Suite 317, 318, Fleming Building, Phoenix, Arizona, Attorneys for Plaintiff. [8]

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*In the District Court of the United States for the District of Arizona.*

IN EQUITY.

No. E-33—(PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**The Amended Answer and Cross-Bill of the Norma Mining Company Defendant.**

The amended answer of the Norma Mining Com-

pany, a corporation, to the bill of complaint filed in the above-entitled cause and to the first cause of action therein alleged respectfully represents and shows:

This defendant reserving all manner of exceptions that may be made to the uncertainties and imperfections of the first cause of action in said bill stated, comes and answers thereto and admits:

I.

The allegations contained in paragraphs 1 and 2 of said first cause of action.

II.

This defendant, The Norma Mining Company, denies that it made, executed or delivered the promissory note set forth in paragraph 3 of said first cause of action and this defendant denies that the president of said defendant at the time of the execution and delivery of said note was authorized [9] by the said defendant to execute the same, and this defendant alleges that if the said note was executed by the said Norma Mining Company by R. T. Root, its president, as alleged in said complaint, said execution and the conditional and limited delivery of said note, as hereinafter set out, was wholly without its authority or consent and out of the course of its regular business and without consideration to the said defendant corporation, and has never been ratified by it.

III.

This defendant denies that it made, executed or delivered to the plaintiff its mortgage deed bearing date the 2d day of August, 1913, as alleged in para-

graph 4 of said first cause of action in said bill of complaint contained, or any mortgage deed whatsoever, and that if said mortgage deed was made, executed and delivered to the said plaintiff purporting to be executed by this defendant (which this defendant denies) that such making, execution and delivery was without authority of this defendant, and that such deed was made, executed and delivered without its consent and out of the course of its regular business and without consideration to it, and has never been ratified by it.

#### IV.

This defendant denies that the sum of one thousand dollars (\$1,000) would be a reasonable amount to allow to plaintiff as attorney's fees to be included in the judgment herein.

This defendant, reserving all manner of exceptions that may be made to the uncertainties and imperfections of the second cause of action in said bill stated, comes and answers thereto and admits:

#### I.

The allegations contained in paragraphs 1 and 2 of said second cause of action. [10]

#### II.

This defendant, The Norma Mining Company, denies, that it made, executed or delivered the promissory note set forth in paragraph 3 of said second cause of action, or either of them, and this defendant denies that the president of said defendant at the time of the execution and delivery of said notes was authorized by the said defendant to execute the said notes, or either of them, and this defendant



alleges that if the said notes, or either of them, were executed by the said Norma Mining Company by R. T. Root, its president, as alleged in said bill of complaint, said execution and delivery of said notes was wholly without its authority or consent and out of the course of its regular business and without consideration to the said defendant corporation, and has never been ratified by it.

### III.

This defendant denies it made, executed or delivered to the plaintiff its mortgage deed bearing date the 31st day of March, 1914, as alleged in paragraph 4 of said second cause of action in said bill of complaint contained, or any mortgage deed whatsoever, and if said mortgage deed was made, executed and delivered to the said plaintiff purporting to be executed by this defendant, that such making, execution and delivery was without its consent and out of the course of its regular business and without consideration to it, and has never been ratified by it.

And having fully answered the complainant's bill herein, the defendant by way of counterclaim herein, as to both the mortgage bearing date the 2d day of August, 1913, and the one of the 31st day of March, 1914, set out and referred to in the complainant's bill herein, says that it is informed and believes and therefore alleges that prior to the [11] execution of either and both of said mortgages there had been for a number of years various personal loans made between the complainant herein and the then president of this defendant, R. T. Root, the latter at times loaning the complainant money or giving him ac-



commodation checks or notes to be by the complainant negotiated for the complainant's use, and at other times the complainant advancing to said R. T. Root money or checks; that at the time of the execution of the first of said mortgages the complainant told said Root he was in great need of money, and begged him to help him by giving him some notes or securities upon which he could raise money, whereupon the said Root, without the authority or knowledge of the board of directors of this defendant, and without any consideration of any kind or nature whatsoever moving to this defendant from the complainant, or any person or corporation in his behalf, all of which was well known to the complainant at the time, executed in the name of the corporation and conditionally delivered said mortgage, at the same time taking from the complainant a receipt and agreement under and by the terms of which the said complainant acknowledged that he received the said notes and mortgage for the purpose of selling them, and from the proceeds of such sale to be made within one month, to pay checks then held by said complainant as executor of the estate of George Miller, deceased, aggregating about ten thousand dollars, which checks were signed by said R. T. Root personally, and of the proceeds of which this defendant had received no part; that by the terms of said agreement, so signed by said Mackay, he promised to return said mortgage and notes to said Root if he had not sold the same within *thirtynth* from August 2, 1913, and also promised that he would not record said mortgage unless he sold it within the said one

month, and that the net balance after paying said checks he would turn over to said Root. That the complainant did not sell said [12] note and mortgage, and this defendant on information and belief avers that contrary to his said agreement the said Mackay had caused said mortgage to be recorded and contrary to the purpose for which it was delivered is now attempting to foreclose the same and appropriate it to his own use.

This defendant is further informed and believes, and upon such information and belief avers that both said complainant and said Root well knew that neither the stockholders nor the directors of this defendant company authorized said notes and mortgage, or had any knowledge or information of the issuance of the same; yet they caused to be inserted in such mortgage a statement that the same had been authorized by the directors and stockholders of this defendant, which was contrary to the facts, as both the complainant and said Root well knew, both parties thereto fully understanding that said note and mortgage were wholly unauthorized, but the complainant insisting that it was necessary to have such a recital of authority to induce his special customer whom he named to take the paper, and that said Root could thereafter procure a ratification of his acts in the premises if the sale was made, and if he, the complainant, did not make such sale within one month, the notes and mortgage could and would be returned to said Root and cancelled, and any ratification by the corporation would be unnecessary, to

which said Root assented and the agreement was drawn accordingly.

And on like information and belief this defendant avers that since such unauthorized issuance of said note for \$16,000 and said mortgage, the said R. T. Root has paid and taken up all said checks then held by said complainant as executor, and has given and said complainant has accepted, his, the said R. T. Root's, personal notes therefor and still holds the same, and all said checks have been delivered by the complainant to said R. T. Root and cancelled. [13]

And defendant further says that as to the second and last of said mortgages and the two notes aggregating five thousand dollars by the said mortgage, purporting to be secured, it is informed and believes, and therefore avers, that said notes and mortgage was made by R. T. Root, its then president, upon personal matters and dealings between said Root and the complainant and having no relation to any business or interest of this defendant, and without any consideration moving to this defendant from the complainant or any other person or corporation in his behalf that said mortgage was executed without the knowledge or authority of the board of directors of this defendant; and as defendant avers upon information and belief, at the time the said Root conditionally delivered said two notes and mortgage purporting to secure the same upon the properties of this company, he received from the complainant a receipt by which said complainant acknowledged that he had never received from said Root two notes, one for \$3,500 and the other for



\$1,500, together with a mortgage for same, executed by the Norma Mining Company on this defendant's property in Mohave County, Arizona; that in and by the terms of said receipt so given at the time the complainant declared and acknowledged that he only received said notes for the purpose of a loan, and covenated and agreed that if a loan was not made he would return the said notes and mortgage to R. T. Root or to one of the sons of R. T. Root and that if he procured a loan on said notes he would pay the money to one of said sons; that thereafter said Mackay advised said Root that he had only been able to raise the sum of \$1,800 on said two notes, which he had paid to his son W. W. Root, and that thereafter said R. T. Root offered to repay and now stands ready to repay said \$1,800 with all interest, upon the return of said notes and mortgage, and that said Mackay refused to accept such payment or to surrender said notes and mortgages, and [14] still refuses.

And this defendant, upon information and belief, avers that at the time said two notes aggregating five thousand dollars and the pretended mortgage securing the same were conditionally delivered by said Root to the said complainant, it was fully known to the complainant, and he was so advised by the said Root, that said notes and mortgage were unauthorized by the directors and stockholders of the defendant, and the said Mackay agreed that if he did not procure a loan for said \$5,000 on the property he would return both the notes and mortgage to said Root; that this defendant is not advised

whether the \$1,800 so paid by said complainant was procured by the negotiation of one or both of said notes but avers that in any event the same does not constitute a valid obligation against this defendant.

Whatsoever may be the rights as between said Root and said Mackay as to the \$1800, said to have been paid to said W. W. Root, certain it is that this defendant never received anything for or on account of said mortgage and notes, or any or either of them, and is in nowise bound by the same or any of the terms or conditions thereof, and the attempt to use said mortgage in the manner proposed is against equity and good conscience.

And this defendant denies that it ever executed any of the obligations or instruments sued on, and avers that they and none of them are its act or deed, or constitute a valid or existing obligation of this defendant.

Wherefore this defendant asks that all of said notes and mortgages be declared void, that the complainant be required to bring the same into this court to be canceled, and to release the same of record by proper deed of release to be filed in the county where the property described therein is situate, and in default of his so doing that a commissioner be appointed by this court to execute such release in the name of the complainant herein as that this defendant may have all such other relief herein as

to your Honor may seem just and the [15] rules and practice of equity require.

THE NORMA MINING COMPANY.

By CHAS. W. HOOVER,

Vice-President.

THOS. ARMSTRONG, Jr.,

ERNEST W. LEWIS,

R. L. MORGAN,

310-315 National Bank of Arizona, Bldg.,

Phoenix, Arizona,

Solicitors for Defendant.

State of Illinois,

County of Cook,—ss.

Personally appeared before the undersigned, a notary public in and for the said County and State, Chas. W. Hoover, who, being first duly sworn, on oath says that he is the vice-president of the Norma Mining Company, Defendant, and has read the above and foregoing amended answer of said company and knows the contents thereof; that said answer is true except as to matters and things therein stated on information and belief and as to such matters this affiant believes the same to be true.

WITNESS my hand and notarial seal this 18th day of March, A. D. 1915.

[Seal]

A. G. LOVELESS,

Notary Public.

My Commission expires Oct. 10, 1915.

[Endorsements]: In Equity No. 6—Prescott. In the District Court of the United States for the District of Arizona. Hugh Mackay, Plaintiff, vs. The



Norma Mining Company, Defendant. Amended Answer and Cross Bill of the Defendant. Copy Received Mch. 31, 1914. A. C. Baker, A. B. Baker, Solicitors for Plff. Filed Mar. 31, 1915, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. Thos. Armstrong, Jr., Ernest W. Lewis, R. L. Morgan, 310-315 National Bank of Arizona Bldg., Solicitors for Defendant. [16]

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*In the District Court of the United States for the  
District of Arizona.*

No. E-33—(PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Decree.**

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was **ORDERED, ADJUDGED AND DECREED** as follows, viz.:

That the defendant The Norma Mining Company, a corporation organized and existing under the laws of the State of Arizona, for a valuable consideration, executed and delivered to the plaintiff, Hugh Mackay, a resident of the State of Colorado, residing in the City and County of Denver in said State, its promissory note for the principal sum of sixteen thousand dollars (\$16,000), bearing date the 2d day of August, A. D. 1913, and payable to the order of



the plaintiff, Hugh Mackay, with interest from date at the rate of six per cent per annum, and that the said defendant executed and delivered its mortgage deed of even date with said promissory note conveying to the plaintiff the hereinafter-described property to secure the payment of said promissory note with interest thereon, together with the costs and expenses of this suit and a reasonable attorneys' fee, and, [17]

That later the said defendant executed and delivered to the plaintiff its two promissory notes bearing date the 31st day of March, A. D. 1914, one of said promissory notes being for the sum of three thousand five hundred dollars (\$3,500) and the other for one thousand five hundred dollars (\$1,500), each of said notes bearing interest from date at the rate of seven per cent per annum, and that at the time of the delivery of said notes and to secure the payment of the principal and interest thereon, as therein mentioned, the defendant, The Norma Mining Company, executed and delivered to the plaintiff its mortgage deed, bearing even date with said promissory notes upon the property hereinafter mentioned and that as consideration for said two last-mentioned promissory notes, the plaintiff paid the sum of four thousand dollars (\$4,000), and that said mortgages are valid and subsisting liens against said mortgaged premises, and

That the plaintiff, Hugh Mackay, is the present owner and holder of all three of the aforesaid promissory notes, and that there is due and owing to said plaintiff from the defendant upon the first of said

promissory notes for principal and interest to this date, February 15, 1916, the sum of eighteen thousand four hundred thirty-four dollars and sixty-six cents (\$18,434.66), and that there is due and owing to the plaintiff from the defendant on the last two of said notes for principal and interest to said last mentioned date the sum of four thousand five hundred twenty-three dollars and forty-three cents (\$4,523.43), and, [18]

That the sum of one thousand dollars (\$1,000) is a reasonable fee herein for the attorney of said plaintiff, and,

That default has been made in the payment of the principal and interest of said promissory notes and the plaintiff is entitled to have said mortgages foreclosed and the property therein and hereinafter described sold and that the said mortgaged property and premises hereinafter described are so situated that they cannot be sold except as an entirety, due regard being had to the best interests of these interested in the same, and,

That the mortgaged premises mentioned in said Complaint and described as follows, to wit, the following patented mining claims situate, lying and being in the Indian Secret Mining District, in the County of Mohave and State of Arizona, viz: The Putnam, The Review, The West Half of the Hulda, The Bonita, The Mountain Scenery, The Chief of the Hill, The Monster, The Peer, The Midway Extension, The Garfield Fraction, The Acquarius, The Grand Central, The Western View, The Lone Star, The Blind Goddess, The Desert Prospect, The



Goadstick, The Norma Fraction, The G. A. R. Fraction, The Oversight, The Buckley, The Nora R., The Big Joshua, The Lookout, The Abe Lincoln, The Ellington, The *Mittsite*, The Center, The Little Giant, The Midway, The Prince Albert, The Orient, The Squattum, The Horn Silver, The Rip Van Winkle, The African, The Norma, The Garfield, The Schaefer's Treasure, The Fraction Quartz, The The Emma, The Nellie Blye, The Occident, The Junction, The G. A. R., and The Daisy Mining Claims, together with all the dips, spurs and angles, and all the metals, ores, gold and silver bearing quartz, rock and earth therein, the old dump now thereon, and together with the mill and machinery therein and the different [19] hoisting plants on the property be sold to raise the amount due to the plaintiff for principal, interest, costs of suit, attorneys' fees, fees and expenses of sale, subject to all taxes and assessments against said property, at public auction, to the highest and best bidder at the courthouse in the Town of Kingman in the County of Mohave and State of Arizona, by the Special Master appointed to execute this decree, after giving public notice of the time and place of said sale by publication of said notice, once a week for at least four weeks prior to said sale in at least one newspaper, printed, regularly issued and having a general circulation in said County of Mohave and State of Arizona, where the property to be sold is situated, and which notice shall describe the property to be sold, and that the Special Master making such sale may either personally or by some



person to be designated by him to act in his name or by his authority, adjourn the sale from time to time without further advertisement, but only upon the request of the plaintiff or his solicitor or by order of the Court or a Judge thereof, and,

That the plaintiff herein may become the purchaser at said sale and in case the said plaintiff shall become such purchaser and shall bid no more than the amount of this decree, he may satisfy and make good his bid by paying any balance unpaid of the costs of suit, attorneys' fees and fees and expenses of sale and delivering to said Special Master a receipt for such sum as shall equal the balance of his said bid and in case the said plaintiff shall bid more than the amount of this decree, he may make good his bid up to the amount of the decree in the manner aforesaid and the amount so bid in excess of the amount of the decree shall be paid in cash, and, [20]

That the said Special Master shall report his acts in the premises to the Court with all convenient speed and upon the sale of said premises being confirmed by the Court, shall execute his Certificate of Purchase to the purchaser, or purchasers, thereof, which Certificate shall specify and describe the property purchased by such purchaser, or purchasers, the sum bid therefor and the time when the purchaser or purchasers at such sale shall be entitled to a deed for the same if not redeemed as provided by law, and said Special Master shall file in the office of the county clerk and recorder of said county of Mohave a duplicate of such Certificate of

Purchase and out of the proceeds of said sale retain his fees and expenses of such sale after the same shall have been allowed by this court and pay to the officers of this court their costs and out of the remainder pay to the plaintiff his costs in this behalf laid out and expended to be taxed, including said attorneys' fees and the sum of twenty-two thousand nine hundred fifty-eight dollars and nine cents (\$22,958.09) together with lawful interest thereon from this date to the date of such sale or if such remainder be insufficient to pay the whole of said amount last named with interest as aforesaid, then he shall apply said remainder to the extent to which it may reach and that the plaintiff shall have a judgment docketed against the defendant for any such deficiency, and that in case said premises shall sell for more than sufficient to pay the sums hereinbefore mentioned to be paid, then he shall, after making payments as aforesaid, bring such surplus money into court without delay to abide the further order thereof, and, [21]

That Edwin F. Jones be and he is hereby designated and appointed Special Master to make the sale herein ordered and decreed and to execute and deliver a Certificate of Purchase to the purchaser or purchasers of said sale as aforesaid and a deed of conveyance to the property, the Court, however, reserving the right to appoint in term time or at Chambers another person such Special Master with like powers in case of the death or disability to act of the Special Master hereby designated or in case of his

resignation or failure to act or removal by the Court, and

That the defendant and all persons claiming or to claim through or under it be forever barred and foreclosed of and from all equity of redemption and claim in and to said premises and every part and parcel thereof if the same are not redeemed according to the law of the State of Arizona and if the same are not so redeemed, then and in that case, upon the production to the said Special Master or to his successor, duly appointed as herein provided of the Certificate of Purchase executed as aforesaid to the said purchaser or purchasers, the said Special Master or his successor shall make, execute and deliver to the said purchaser or purchasers, his or their representatives or assigns, a good and sufficient conveyance in fee simple of the said premises and property, and that upon the execution and delivery of the conveyance aforesaid, the title to the said premises and property so conveyed shall be quieted in the purchaser or purchasers against said defendant, its successors and assigns and all persons claiming by, through or under it, them or either of them and the said purchaser or purchasers or their representatives or assigns, shall be let into possession of the premises so conveyed and that the defendant [22] or any person claiming by, through or under it, who may be in possession of said premises or any part thereof and any person who, since the commencement of this suit has come into possession under it on the production of said Special Master's Deed, shall surrender possession thereof to such purchaser



or purchasers, their representatives or assigns.

Dated at Phoenix this 18th day of March, A. D. 1916.

Done by the Court.

WM. H. SAWTELLE,  
District Judge.

[Endorsements]: No. E-33 (Phx.). The District Court of the United States for the District of Arizona. Hugh Mackay, Plaintiff, vs. The Norma Mining Company, Defendant. Decree. Baker & Baker, Suite 317-318 Fleming Building, Phoenix, Arizona, Attorneys for Plaintiff. Filed Mar. 18, 1916, at — M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [23]

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*In the District Court of the United States in and for  
the District of Arizona.*

E-6—PRESCOTT.

E-33—PHOENIX.

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Statement of the Evidence. [23½]**

**Testimony of Hugh Mackay, for Plaintiff.**

HUGH MACKAY testified as follows:

Direct Examination.

My name is Hugh Mackay. I reside in Denver, Colorado. I have been doing contracting at times

(Testimony of Hugh Mackay.)

and building, etc., and some mining, too. I am acquainted with Mr. R. T. Root. I knew him a good many years. Plaintiff's Exhibit "A" for identification is signed by The Norma Mining Company, by R. T. Root, president. Saw Mr. R. T. Root sign it. Got the note from R. T. Root. The signature of The Norma Mining Company, by R. T. Root, president, is attached to Plaintiff's Exhibit "B." Saw Mr. Root execute and sign it. Got the mortgage from Mr. Root. The note and mortgage has never been paid. The signature of The Norma Mining Company, by R. T. Root, president, is attached to Plaintiff's Exhibit "C." Saw Mr. Root sign it. That note has never been paid or any of the principal or interest or any part of it. I got it from Mr. R. T. Root. Plaintiff's Exhibit "D" for identification is signed by The Norma Mining Company, by R. T. Root. Saw Mr. Root sign it. Got it from Mr. Root. No part of the principal or interest has been paid on that note. Plaintiff's Exhibit "E" for identification is signed by The Norma Mining Company, by R. T. Root, president. Saw Mr. Root sign it. It is attested by W. W. Root, secretary. Got it from Mr. Root. No part of that principal or interest mentioned in that mortgage has ever been paid.

#### Cross-examination.

At the time I received the first note and mortgage, other papers were executed. I gave a receipt to return it. Yes, I signed Defendant's Exhibit No. 1. At the time I received from Mr. Root the second two notes and mortgages, I signed a receipt.

(Testimony of Hugh Mackay.)

I have known Mr. Root to be president of The Norma [24] Mining Company for years; that is, several years. I gave the checks to Mr. Root. That is all I can tell. I have the promissory notes executed by Mr. Root on August 25. The checks are not all here. Some of them are missing. Exhibit No. 1 refers to certain checks aggregating \$10,000. There is another check on the same bank which he gave me at the time. I refer to a check for \$750. That check was included in the transaction when it was made.

The check marked Defendant's Exhibit 3 was then introduced; also a check reading: Denver, Colorado, June 9, 1913, Colorado National Bank, pay to the order of Hugh MacKay, Ex., \$4,986.72. Signed R. T. Root, and marked Defendant's Exhibit No. 4. A check marked Defendant's Exhibit No. 5. The check marked Exhibit 6. The check marked Defendant's Exhibit 7. A check marked Defendant's Exhibit 8.

Witness then resuming, testified:

I wouldn't be sure in whose writing the word "cancelled" appears on check. Might be Mr. Root's. I received them at the same time—these notes. I think it was August 26th. There are seven notes. The endorsement is in my handwriting to all of them.

Defendant's Exhibit 16 introduced.

Witness then resuming, testified:

This check for one thousand dollars is the check that was received from Mr. Root at the time you ad-



(Testimony of Hugh Mackay.)

vanced him the thousand dollars on June 19, 1913. I expect it is. There is another check for \$750 that I gave him on that date, too.

Defendant's Exhibit 17 introduced.

Witness then resuming, testified:

I got a receipt from Mr. Root at that time. Have that receipt, I expect, somewhere. This is the receipt. [25]

Defendant's Exhibit 18 introduced.

Witness then resuming, testified:

At the same time that I received the note and the statement by Mr. Root, I executed and delivered to Mr. Root that paper.

Defendant's Exhibit 18 introduced.

**Testimony of R. T. Root, for Defendant.**

R. T. ROOT, called by defendant, testified as follows:

**Direct Examination.**

I have read the records contained in the minute-book of The Norma Mining Company. There is no record of any meeting of the directors or stockholders of The Norma Mining Company at which the mortgages which have been introduced in evidence and the notes to Hugh MacKay, complainant in the present case, were under consideration or referred to. The minutes do not show anything of the kind.

Q. Well, now, you may state, Mr. Root, whether or not these notes to Mr. MacKay and the mortgages purporting to describe them were ever authorized by The Norma Mining Company.

Objections. Answer would be a legal conclusion.

(Testimony of R. T. Root.)

The COURT.—I will sustain the objection to that question.

Exception to the ruling.

Mr. ROOT.—I have been president of The Norma Mining Company ever since its organization; and as such have been familiar with its business and the transaction of its business. I have attended all meetings that have been held of the board of directors and stockholders. This record is a true and accurate record of all the meetings ever held by the board of directors of The Norma Mining Company or its stockholders. There were three directors, two from the time of the organization until the time that this mortgage was executed. Mr. Lowry had resigned and the third one had been put in his place. He was [26] Mr. H. M. Root. I usually called the meetings of the corporation, and was present at every meeting of the corporation. I did not write and copy all the minutes, only the minutes since the resignation of Mr. Lowry, or rather since the acceptance of his resignation. His resignation was accepted in July, 1911. He had resigned sometime before by written resignation. Mr. H. M. Root acted as secretary in his place from 1911 when he quit until the time of the execution of these mortgages. Mr. W. W. Root was assistant secretary part of the time. On July 15, 1911, Mr. Lowry's resignation as secretary and director was accepted. Since the execution of these mortgages there have been some other changes in the directors. I do not want to be misunderstood. The Norma Mining Company

(Testimony of R. T. Root.)

shut down and discontinued business, I believe, in the month of August, 1910—may have run to September. The Norma Mining Company has not been engaged in any business from the time it so shut down to and including the present time. Certain checks payable to Mr. MacKay as executor and certain notes given to him in the same capacity and signed by me which have been introduced in evidence. Such as were loans of money were to me personally. The Norma Mining Company never received anything for or on account of any of the loans referred to. I deeded my farm near Boulder, Colorado, which was clear from encumbrances to Mr. Mackay, which he holds as security for my personal indebtedness to him. I do not know its present value.

Q. Mr. Root, have you your account which was marked for identification, furnished to you in 1910 by Mr. MacKay?

A. Yes, sir. (Produced.)

Mr. ALDRICH.—If the Court please, I do not wish, as my friend, Judge Baker, intimated a few minutes ago, to have any [27] accounting or attempt to have any accounting between Mr. Root, who is not a party to this case, and Mr. MacKay, or to attempt to show the state of accounts between them, and I am introducing this account in evidence, which Mr. MacKay has identified, for the restricted and sole purpose of showing that at the date of its rendition to Mr. Root he did not claim at that time that Mr. Root owed him anything and that all of the



(Testimony of R. T. Root.)

money that Mr. Root now owes him has been borrowed from Mr. MacKay since that time, and I offer it in evidence for that purpose, if the Court pleases.

Judge BAKER.—If the Court pleases, I object to it as immaterial and irrelevant. It is not pertinent to any issue in the case. It would be absolutely of no assistance at all. As I understand the proposition, it is an account rendered by Mr. MacKay to Mr. Root in his private capacity in the year 1910, and it did not propose to cover any of the indebtedness covered by the mortgages in question. It is simply an old and past account. How could that be material to any question here at all? These moneys that are involved in this mortgage have been the indebtedness of Mr. Root or the Norma Mining Company, as we contend and shall contend, to Mr. MacKay, as recently as since 1910. Not involved in this question at all.

Mr. ALDRICH.—If I can have that understood between Judge Baker and myself in the record.

The COURT.—He has already stated it. That ought to end it.

Judge BAKER.—Your Honor, this is my understanding in my objection to this matter. Of course, I am not able to state on the moment how far back these moneys embraced in this mortgage would run. I would not like to be understood here—[28] I am only speaking from the facts, or rather following the gentleman sitting there. I understood the gentleman to state that the moneys embraced in this were in this account. I do not want to be bound—if we

(Testimony of R. T. Root.)

are going into an accounting to show the origin of these moneys in these two mortgages, some of these moneys may go back of that account, so far as I know, and I cannot see that it throws any light on this question. If any of the moneys embraced in these mortgages are embraced in this account or during the time this account was running, it has all been closed up by way of these mortgages. One of these, as delivered to us, was a mortgage for sixteen thousand dollars. We imagine there is no going back of that account, and we furthermore contend that the items making up the sixteen thousand dollar mortgage are immaterial and not set forth anywhere at all in this case, that the mortgage and note settles that.

The COURT.—I will sustain the objection.

Mr. STONEMAN.—Exception.

The COURT.—Note an exception to the ruling of the Court.

Mr. ALDRICH.—You may take the witness.

Cross-examination.

I was not asked in reference to the by-laws and articles, but the minutes of the board of directors' meeting do not contain authority to execute the notes or mortgages, other than the by-laws and the articles. Outside of the by-laws and articles of incorporation—I do not say that they do. The directors of that corporation at first were Mr. Lowry, Mr. Walter W. Root and myself. Mr. Walter Root is my son. Mr. H. M. Root is my son. I was the other director and president of the corporation.

(Testimony of R. T. Root.)

The first secretary was, I believe, Mr. Lowry. On pages 12 and 13 of these minutes are in Mr. Lowry's handwriting. [29] The minute entries on page 15 and a portion of page 16 is my handwriting. I entered the minutes. It was convenient for me to do so. I do not think it was necessary. My son had been out part of the day and came back in the evening—stayed home perhaps for some time down there at times when this occurred. H. M. Root is signed to that minute entry as secretary, I think. I don't think these minute entries were made of the date they were supposed to be in this record, on July 15th, 1911. I cannot remember the date this minute entry on page 15 and 16 in this book was actually made. There was a memorandum of the meeting in which the record—the putting on record of the deed of The Norma Mining Company property, and there was a memorandum at the time and they were written a good while since then. They were not written at that time. I do not recall when they were written. They were not written, however, at that time. That meeting was held at the date it is given there. These minute entries were written up sometime afterwards. My son was going away. We held a meeting before he should go away, and on that trip he went and recorded the deed. I have a deed here in my hand that was recorded upon that trip. The date of that is the 29th of July, 1911. These minutes were not written since the commencement of this action. Some subsequent ones were, but not these. I think this minute-book was in Denver at



(Testimony of R. T. Root.)

that time, July, 1913, either in my office or at my residence, in my charge. I wrote the minute entries as they appear on page 16, dated December 26th, 1911,—same as the others, convenient for me to do so. No, it was not always convenient for the secretary to do so. He had been absent from home. He was away from home visiting friends. The minute entries as they appear on page 17 of the minute-book, [30] dated March 1st, one, and the other dated March 15th, 1915, is my handwriting. Have been keeping all the minutes of the books of the corporation. The secretary very carefully verified and certified to it. He signed his name to it. He was my son. But few meetings of the board of directors of this corporation, since its organization, were held. I do not recall the number. It is there in the book. Give me the book and I will tell you. Well, I don't recall the number. There were five—four held since the retirement of Mr. Lowry. Six meetings of the directors held from 1905 up until 1915, I believe. Mr. Lowry was secretary of the corporation at one time. I do not recall when he resigned. It was some time before his resignation was accepted. He gave a written resignation that was accepted July 15th, 1911. That appears upon this minute-book, at page 15. I made the entry, all of these, as I answered before. Mr. Lowry's written resignation I have here. Here it is.

Witness hands document to Court.

Mr. STONEMAN.—I will ask if there is any dispute as to Mr. Lowry's signature?

(Testimony of R. T. Root.)

Mr. ROBINSON.—No; we are not disputing that.  
[31]

R. T. ROOT, being recalled by plaintiff, testified as follows:

The Norma Mining Company ceased operations in September, 1910. The property had been operated but a short time, comparatively—several months—possibly a year. Prior to 1910 the Norma Mining Company properties were being prospected. The company did not incur any accounts. I did personally. I paid the development of the property in my own name and paid all the expenses of operation. I was general manager of the corporation during that time, and always have been. I haven't had entire control of The Norma Mining Company during its entire existence. I operated it and run it on my own account on behalf of others. I have procured the funds and paid the expenses whether or not all of these outside expenses were incurred in my individual name. This is my signature to that instrument.

(Plaintiff's Exhibit "F" introduced.)

I did not charge up to anybody the outlay and expenses that I paid for the operation of the Norma Mining Company prior to 1910, or since 1910. I kept a record of some expenses, but I do not recall to have made any charge. I keep no account between myself of the expenses that I paid in the operation of the Norma Mining Company and the company. I claim and hold no account against the Norma Mining Company in the sum of about \$30,000,

(Testimony of R. T. Root.)

for expenses and outlays in behalf of the company. The Norma Mining Company is not indebted to me in any sum for outlays and expenses in July, 1913. It was expenses on the property, not the company, for the development of the property. There was parties interested whose money I used, I procured and used on the property, opening the property. I refer to my wife; she had furnished money which was used. She had the money; a portion of it was from the sale of property that was in her name. My wife owns shares in the corporation, two certificates, one for 149,999 shares, the other for [32] 149,998 shares. These shares were issued to my wife at the time the stock was issued, after the incorporation of the company; I do not recall the date. I couldn't begin to tell you what my wife paid for those certificates; I do not recollect, it is a long time ago. The certificates were issued to Mr. E. G. McDermott and transferred to her. Mr. McDermott was in my employ. The certificates were assigned to her by McDermott at the time of the issue of the certificates. Those certificates are now held in trust by a trustee. I have not got the certificates present in court. There was not a meeting of all the stockholders and all the directors of The Norma Mining Company held in the office of Mr. F. W. Lowry, in Denver, Colorado, between the 19th and 22d of July, 1913, that is, of all the directors and stockholders. There was no meeting in the office of Mr. Lowry at Denver, Colorado, either on July 19th or July 22d, 1913, at which Mr. Lowry, Mr. Walter Root, my son,



(Testimony of R. T. Root.)

and Mr. MacKay were present. A meeting of the stockholders and directors of the company was not then held, nor a resolution passed and adopted, neither was there a meeting at that time when the shareholders and directors adopted a resolution authorizing a mortgage to be executed by me for the sum of \$25,000 on The Norma Mining Company, reciting that a mortgage be executed in favor of Mr. MacKay and reciting that The Norma Mining Company was indebted to me in the sum of twenty-five or thirty thousand dollars, and that in satisfaction of that claim of mine against the company that a mortgage be authorized to be executed by me in the sum of \$25,000 to Mr. MacKay. I was not present at any such meeting, and there was no such action. At no such meeting did I have all the shares of the corporation in my possession that had been issued up to that time, and did not announce to the meeting that I was the owner of all those shares, and that those shares were signed in blank on the back, and did not say I was the owner of all the shares and that I had [33] the power to authorize the mortgage. I did not have the shares which had been issued to my wife in my possession, signed in blank. I don't know whether Mr. Lowry was secretary of the meeting or not, but I know he was not secretary of the company, neither was he an officer of the company at that time. I never in my life heard of such a meeting in July, the 19th or 22d; never heard of it and, therefore, did not receive anything from Mr. Lowry about it. "This instrument is hereby executed and

(Testimony of R. T. Root.)

delivered by R. T. Root as president, by order of the board of directors of this company, and said execution and delivery is duly ratified by meeting of the stockholders of the company adopted, all shares issued was represented and unanimously voted in favor thereof." The explanation of the above statement in the mortgage that I executed is this: There was no delivery of the paper, except only as a possession to show if it could be procured, if it could be sold, that all these matters could be procured. If they could not be procured, then it could not be sold. The recitation was this way true if it would be made, if that was used, that was the only way to deliver or arrange paper signed and arranged for that purpose. At the time of the execution of this mortgage, the board of directors or stockholders did not order the issue of the mortgage. It was not delivered. It was not false. I am willing to sign an instrument of that kind, instrument duly authorized by the board of directors. It was not to be entirely connected by delivery, though, without being complied with. I don't recall who dictated this mortgage. This mortgage, \$16,000 mortgage, was delivered conditionally to Mr. MacKay to be sold by Mr. MacKay, and a purchaser to be procured, when it should be put in shape as the paper stated. A purchaser was not procured. The recitation in the second mortgage for \$5,000, the same as the first, was conditioned, plainly, that it be done if this was sold. It was never executed, never delivered. [34] It was a paper made to be finished; that part of it



(Testimony of R. T. Root.)

was to be done afterwards with the paper, otherwise it was not to be delivered. The first mortgage was never sold. It was conditionally delivered to Mr. MacKay and never returned to me. I think the date of that mortgage is August 2, 1913. "There is a mortgage by aforesaid grantor to aforesaid grantee on said property, \$16,000, and some taxes, all of which the grantor will pay." The above recitation was simply so that Mr. MacKay could procure the whole sum. If not, procure it in two amounts, and if it was procured all of it, that the company would be arranged with, and if it was not arranged with them it would be withdrawn, it couldn't go through. I executed this instrument with that clause in it for the purpose that this should be the same as the other, the condition the same, and the other was to be arranged and the money procured as well. I did not demand the return of the first mortgage as he was still making an effort to sell it, and that continued right along. The first mortgage was long overdue. Mr. MacKay was endeavoring to sell it as his time for selling the mortgage had been extended.

Redirect Examination of Mr. Root.

I don't remember how long after the organization of The Norma Mining Company the stock was issued. I think it could be ascertained. My wife had connection with the property at an earlier date. I have part of the location notices and the deeds to her of the property or certified copies.

(Subject postponed until papers procured.)



(Testimony of R. T. Root.)

Mr. Lowry stated to me that he desired to resign at the time of the death of Mr. Moffett. Some year or so prior to that he spoke about resigning at the time of Mr. Moffett's financial embarrassment. He handed me his resignation a considerable time before that. [35]

R. T. ROOT, on redirect examination, testified as follows:

Before he talked to me about it—held to be accepted at any time. His resignation was handed to me before Mr. Moffet's death. Quite a time before Mr. Moffit died, Mr. Moffet died in March, 1911. There was an extension asked for or granted to Mr. Mackay of the time within which he could sell this mortgage. I have a copy of a telegram that I sent. I have a copy of it here. Letter marked Defendant's Ex. 22, received by me in the due course of mail after that date. The mortgage was never given to him as security but was given to him for selling only. At various times Mr. Mackay applied to me for leave to have the mortgage recorded. I always told him not to record it. The request Mr. Mackay made with [36] reference to recording the mortgage was verbal and I think I have letters also. The letters purporting to be signed by H. Mackay, bearing date, February 12th, 1914, and addressed to me I received in the due course of mail from Mr. Mackay. I have a copy of the telegram referred to in this letter. This is a copy of the telegram referred to, marked Defendant's Exhibit 24. This H. M. R. here is my son. I do not know where the

original is. I have never seen it since I sent it to him. The original telegram signed, H. Mackay, under date of February 10th, 1913 was received.

Introduced and read in evidence.

Witness then resuming, testified: The letter purporting to be written by Mr. Mackay, dated August 9th, 1913, was received in the due course of mail. The letter purporting to be signed by Mr. Mackay, dated September 6th, 1913, was received in the due course of mail.

Introduced and read in evidence.

Witness then resuming, testified: The letter dated August 27th, 1914, purporting to be signed by Mr. Mackay and addressed to me was received in the due course of mail.

Introduced and read in evidence.

Witness then resuming, testified: Those certificates have been in Mrs. Root's possession up until the time the trustees had them. I do not recall I have had them. I first told Mrs. Root that I had put a mortgage upon this property some time after the mortgage was prepared for the purpose of sale and delivery, before she knew anything about it. I am not certain but I think I was in Los Angeles at the time of the alleged meeting [37] of the stockholders and directors of the Norma Mining Company at Mr. Lawry's office. I was there about that time and—I think I was there about the 15th, I am not sure. I was unable to find information at the hotel that would give me exact data, but about that time I was there. Have method of recalling the business that took me to Los Angeles very well.

(Testimony of R. T. Root.)

I got the money, with which I went from the Miller estate through Mr. Mackay. I refer to the money, a receipt for which has been introduced here, bearing date June 19th, 1913, for a thousand dollars. The business that took me to Los Angeles was to make a sale of a water power on which I expected a large amount of money, to Mr. Putnam. There was a good deal of correspondence with him on the subject. I got Mr. Mackay to go to Santa Fe, I believe, at that time, to file some paper there with reference to water rights. From there, he came to Los Angeles. He met me there. It is barely possible that he made a trip somewhere else first, but he came to Los Angeles right away. I couldn't say if he came on the same train, or had been on some trip, but within a very few days he was on his way there. The mortgage has been introduced, for \$16,000, was prepared and signed by me in Los Angeles on the 2d of August.

Recross-examination.

The witness then resuming, testified as follows: I went to Los Angeles. I am unable to recall the date exactly. I think I went about the 15th of the month, of July. I did not leave there the latter part of August, as I remember it. I could not swear that I was not in Denver on July 24th, but I am under the impression that I went before that time, nearer the 15th. [38] I am certain I was not at any meeting on the 19th or 22d. Yes, sir, I wrote that letter. My wife went with me. I think Mr. Mackay went as far as Lamy Junction. I think it was that time.



(Testimony of R. T. Root.)

He didn't go when I did. He came afterwards. We may have gone as far as Lamy but I do not think Mr. Mackay went further at that time. I do not recall that he went, I don't remember how that was. I know he was in Los Angeles right away after we were but not at the time. The hotel I stopped at in Los Angeles was the Alexandria Hotel. When I informed Mrs. Root of the execution of the mortgage, I don't remember. I do not recall the length of time, but it was some little time, as I remember. To the best of my recollection, it must have been at least, a number of months. She knew it was talked of before that time, but didn't know that it had gone into the condition of— She knew perhaps within a month or two. I didn't talk to her of having concluded any arrangements, as I understand, that I remember of, and I am satisfied she didn't know that papers had been made and executed for the purpose of delivery after the money was paid. I am sure she did not hear it talked about or knew anything about it before it was executed. Mrs. Root kept the shares of the Norma Mining Company, these 299,997 shares, with her private papers that she had, sometimes in one place and sometimes in another. She carried them with her, often-times, packed them about on her person. I have had them in my hands at different times, but she continued to have the possession of them. Not the slightest recollection of having them in my possession any time in July. Three hundred thousand shares have been issued. The remaining shares of that corpora-

(Testimony of R. T. Root.)

tion are unissued. Mrs. Root owned 299,997 issued shares. Mr. H. M. Root owned one of the shares. It was [39] issued to him after he paid the money, for the money he paid. I think he did pay a dollar. Mr. Walter W. Root owned the other share. He was a director. I owned the other share. I paid more than a dollar for that one share, to the Norma Mining Company, expenditures of the Norma Mining Company, in money. I believe there were no other shares issued—excuse me. There were none other shares issued, I believe, at the time these three that were paid money for, as I remember. When I first saw the resignation of Mr. Lowry as director and secretary of the Norma Mining Company, I don't remember, but it was a long time or some time before it was accepted. His resignation was accepted by the board—it was in 1911, in July. It isn't true that on the formation of the corporation that this resignation of Mr. Lowry, undated, with the resignations of the other directors, was all filed with the company as a matter of form. I admit that I got money from Mackay from his estate through him. It is true that I got money from Mr. Mackay belonging to the estate of George Miller, deceased and he had security for it. He had the mortgage as security. I have not paid the money recited in the mortgages. They are not sold yet. I have not paid anything on the notes. I have not paid anything on the mortgages for sale, the ones that were to be sold. I have not paid any of the notes that I gave to Mr. Mackay in Los Angeles that

(Testimony of R. T. Root.)

are in evidence. I have not paid either one of the notes that the mortgages were given to secure. I have not paid either one of the notes that I handed to Mr. Mackay when he got these mortgages, and mentioned as security in the mortgages. I gave a deed to the farm, you see, to Mr. Mackay about the 2d of [40] September, 1911, I believe. I gave two deeds. First, I gave a deed in 1910. I delivered this deed in 1910, the 31st day of March, 1910, and he advanced me some monies on it, which were all paid up, and then afterwards a year, the next year, the 2d of September, I believe it was, he returned this deed to me, which I have here, and I executed a new deed to that farm, and gave him a check for \$4,500 with the deed, which I also have here. Mr. Mackay had some other monies of an estate that were not in his control at the time and wanted to use them as security. There was nothing that I had owed to him—I was not owing the estate anything excepting a loan which was secured, and approved by the Court, on real estate. Now, then, I did not owe the estate anything at all, and I gave him another deed to this farm, gave him another check and wrote a letter, such as he wanted, copy of which I have here, and afterwards he returned that check to me but did not return the deed. In the meantime, I got some more checks from him which was merged in one, into this \$9,000, and it then became \$10,000, and in this receipt— The conveyance of that farm had to do with this particular loan of about \$10,000. He was holding the farm then,



(Testimony of R. T. Root.)

afterwards as security for that. Under the arrangement that he would give me reasonable time before he would call for the money. I had it in writing here and I do not know its real value. It is comparatively small, what I paid—I paid \$27,000 for it in money but its value afterwards was not that. I took part of it at first, and part a second time, aggregating \$37,000. Yes, he took that property for the security. I will show you this paper, and it will give you exactly what that arrangement was. I believe I have [41] it here. Here is the check that I gave to him at that time. He said that he had loaned—that is the receipt that he gave me for the \$4,500 undated check. He held the farm as security. There was no writing about its being security. I gave him checks afterwards, soon after September, at various times, aggregating the amount named, and he continued to hold the farm as—against the checks, or continued holding it until the checks were paid, and still holds it. I refer to September, 1911—September 2d, I believe, 1911. Mr. Mackay has that deed—executed the deed—he recorded the deed. He was not to record it, but he had—he said he was afraid to hold it in that way—unless there would be complaints about it, and knew that farm was the security for the money that he wanted to have paid off. I mean the \$10,000. That was why I gave that contract with him which I expected if he could make a loan would carry through. After that had all been cleared up, he did not tender or deliver to me a deed reconveying the title to that

(Testimony of R. T. Root.)

farm to me. He never offered to do so. These shares of stock were issued to my wife at the time they were executed by Mr. MacDermott. They were first issued to him and then assigned to her. I believe they were not issued right at the time of the organization. After they were issued to Mr. McDermott, they were transferred by him to ~~Mr.~~ Mrs. Root immediately. The certificates were made to his order and then assigned by him to Mrs. Root. The object of issuing them in his name was a sort of formal organization or way with a trustee to transfer. A lawyer advised that it was better to put the corporation through a second party, and we had that advice from some of the best lawyers there, not in this matter but in other [42] corporations. These were written, dated July 1st, 1905. I think it was two or three years after the organization of the corporation. Before that time, title and transfers were in such shape it was considered not to issue them. I don't think they remained in the book, executed, for a year or two. The consideration of the assignments of these shares of stock was the property, these White Hills, the Norma Mining Company properties, 46 patented mining claims. She had the title to them. It was arranged that she was to have the property with money she had paid. It was an arrangement that was through Mr. Moffet, with whom I had a great deal of business, and he made the deed accordingly, made and executed and delivered the deed. He executed the deed and Mrs. Moffett was away and there was some delay about

(Testimony of R. T. Root.)

her executing it. We wanted it acknowledged and signed by her. And then the deed was held for a long time unrecorded. The deed was delivered to her on its execution by Mr. Moffet. The 3d of July, 1905. It was delivered at that—the 3d, not just that date but right around that time. Mrs. Moffett had not acknowledged it and it was taken back to Mr. Moffet and drew up her acknowledgment and that was, now let me see, in 1907. That would be my memory about the matter, two or three years, you see. I never owned these shares of stock, or any interest in them. I do not recall having had a proxy from her. I may have, but, to the best of my memory, I had not. I never voted them as my wife's proxy at any time when the corporation had under consideration the execution of these notes and mortgages. Certainly not. I have not the slightest memory of ever having had such a thing. To the best of my knowledge and believe, I have not. This company had no stock ledger-book. This is the only stock book it has. [43]

**Testimony of Hugh Mackay, for Plaintiff  
(Rebuttal).**

HUGH MACKAY, recalled, testified as follows:  
REBUTTAL.

In July, 1913, had a conversation with Mr. Root in reference to the payment of the monies which I had advanced to him. We talked about it at different times. July 19th, we talked then. Had conversation before I met with Mr. Root in reference to the



(Testimony of Hugh Mackay.)

payment of these monies advanced to him, at different times whenever he came to Denver. I did. Yes, in July. I think the morning of the 19th was the time I talked when I come to talk with him. We talked about it and Mr. Root told me, "Mr. Mackay," he says, "if you are afraid—he was rustling for money then, you know—" "if you are afraid, you know the White Hills in Arizona." I said, "Yes, I have been there." "Well," he says, "I will give you security on that." "Well," I said, "I don't know whether I could handle it that way," on account of it being trust funds, of course. And he talked and said he would like to get some money himself, and finally I said if mortgage was given on it and sold might be able to cash it, or something like that. Well, we talked that over and concluded that I would try to sell a mortgage and pay off this estate debt, and Mr. Root wanted some money. The property referred to was that same property, the Norma Mining Company. Well, we talked the matter over until finally he told me, "You know Mr. Lowry?" I said, "Yes." "Well," he says, "he knows all about it"; and we went over to see Mr. Lowry. He said Mr. Lowry was one of the directors of the company that owned the property, the Norma Mining Company. I didn't know the name of it then. Well, he said, "We will go over there"; and we went over to see Mr. Lowry in the Colorado Building. We went to his office, Mr. Lowry's office. We had a talk [44] *a talk* about this matter. The talk was about money, and if it could be raised and finally it was concluded

(Testimony of Hugh Mackay.)

that Mr. Lowry should get ready resolutions, etc., for a meeting to authorize the execution of the mortgage or mortgages up to \$25,000 on that same mining property down in Arizona, the Norma Mining Company property, and Mr. Lowry said he would attend to it. In the afternoon, Mr. Root appeared, and Walter, Mr. Root's son, and one of the directors, as I understood, and a resolution was voted upon, authorizing the execution of the mortgage or mortgages to the amount of \$25,000, and they held a director's meeting right away. They fixed it up, just what was necessary. I talked to Mr. Root and told him, "You want to have this thing right," I said, "*if going* to do anything with it." He said, "Mackay, I own every share of stock," and he exhibited the shares right there. They were issued in the name of McDermott and assigned in blank, excepting a couple of shares. He said there was one in the name of Mr. Lowry, and Walter Root. Well, I told him I supposed that was all right. He said, "In addition to that," he says, "the company owes me approximately \$30,000 now." He says, "I don't know the exact figures, but Mr. Lowry there knows." And he says, "Any mortgage that is issued," he said, "for money for me or for my use to the extent of that amount," he says, "there is no one on earth that can find fault with it." Those are the words he said. I said, "I believe that." Mr. Walter Root was there. Mr. Lowry was there and Mr. R. T. Root. Lowry did the writing up of the thing, of the minutes—resolution. He is the man that attended to



(Testimony of Hugh Mackay.)

the business, and he acted with them. That was the 19th of July, 1913. Mr. Root said that he expected [45] to be able to get some money in California, but he wasn't sure, and he said he would like if this mortgage could be handled, and if it should be, it could be made, he was empowered now to make it any size within the limit that would satisfy them if we could get a party, and he said, "I want you to go to California with me and we will fix it up some way," he says. So we left on the 24th and we got to Los Angeles perhaps around about the 27th and I was not able to do anything with it. I stopped at the Hollenbeck. Mr. Root was at the Alexandria Hotel. I visited them at the Alexandria Hotel very often. The only reference was about the amount of the proposed mortgage. Mrs. Root had something to say about it. She thought it should be made \$25,000, and Mr. Root told her it was hard to sell any large amount of mining property just now. So did I. She wanted Mr. Root to have what money he needed in his business, also. He was needing money at the time badly. The purpose of Mr. Root, as announced by himself, in going to California, was to try and raise money for different things. He expected to get money from some other source, unless he could get it on the mortgage. It had reference to the payment of my claims. He obtained the money over there, I think, after I left but not before I left. I couldn't arrange for some one to buy the mortgage or purchase it, and we concluded that he would make one to me and I would go alone on back



(Testimony of Hugh Mackay.)

east, back to Denver, and I would try to raise money there on the mortgage sale. It was executed right at that time. The mortgage that was executed has been introduced in evidence. The receipt introduced in evidence, I signed it. It is his writing so far as I know. There are some interlineations in there but I know [46] I signed it. I am sure that I signed it, and that Mr. Root wrote it. I returned to Denver with this deed from Los Angeles, with the mortgage. I tried to sell it. I endeavored to sell it and out of the net proceeds it was understood between him and me, that is, personally, that even if it took a thousand dollars discount or more, to get the money, and then he needed some money himself. This mortgage is for \$16,000. At that time the mortgage was given me at this time to sell, and we hadn't come to that yet at this time. I came back to Denver, as I say, and I hadn't yet been able to sell it, and if I could have been able to sell it, I was authorized to do so and so, you see. So that indebtedness was not fixed in there at that time. I went back to Los Angeles from Denver. I left on August 2d, and on the, about the 22d or 23d, I went back again. I didn't succeed in selling. And we had some correspondence in the way of telegrams to his son, in cipher. All I could tell is what he told me and Walter. He told me what his father wanted to do and for me to go back, and I went, and when I got back there I arranged with Mr. Root—I had the checks yet that were offered here. I had all those checks in my possession. I refer to those

(Testimony of Hugh Mackay.)

checks introduced in evidence here. They were due and overdue and I was afraid, of course—considered as cash in my possession—and if they were not paid I did not know just how it would be. So I told Mr. Root that the best way to fix this thing was to make notes for the original amounts that were due from the debts of the original loans received, and we computed the interest, etc., and give me the mortgage to secure the amounts represented by these notes, and if sold I would fix the thing up and give him his checks. That was [47] the way it was done. Now, I told him—he thought he could get the money within, maybe, a month. Now, I said, “I will hold them for you just as long as I can, and you just hurry as much as you can.” From time to time I did that. Now, if you want to know the arrangement that was made, I will tell it. I took this \$16,000 mortgage as my own as credit. I delivered to Mr. Root the checks in question, yes, sir, and took from him the notes that have been introduced in evidence. He got the money for all of them excepting one item amounting to \$3,000. He didn’t cover the whole of the mortgage, so I made an arrangement with Mr. Root that I would take it all and I would give him a due-bill for that, and I had other notes on another matter between him and me, and since then I have fixed it all up. The indebtedness that I had in claims against Mr. Root at the time I took this mortgage as security would be about \$13,000. Root advanced \$3,000 but I did something else. Yes, I had some notes and bonds. They didn’t belong to

(Testimony of Hugh Mackay.)

this same loan. They were personal matters between him and me. They were five hundred and some interest, and then I told him I would pay the balance, whatever it was. That was not embraced in this transaction. At the time I was in Los Angeles, it hadn't amounted to that much then. So as to make the \$16,000, the amount that I had with me there against him to fix up, was \$3,000 there. I said, "I will fix this thing with you this way. You can put it all in for the estate, and that leaves," so much. "Now," I said, I told him if he wanted me to take in any of that note, these notes and bonds I am speaking of, for \$2,500 and some interest, which he faithfully agreed to attend to. He said to me, "Mackay, you give me a [48] receipt for it and when I get to Denver I will have some money and I will pay you in currency, and you can hand it back to me"; and in the meantime he made a receipt on the other and made a note, and we fixed this \$16,000 in that manner. Mr. Root made a personal note. You know, the amounts of these mortgage securities were represented by demand notes. He so understood, I guess. There was, first of all there was items of \$9,036.18, then there was another check of 750—that was a personal check to me that he gave me on the Colorado National Bank, then there was a check of \$1,000—see? I had these checks. I am stating what I gave, made the amount of the checks. That is what you wanted to know, what I surrendered in cash for the notes and the mortgage. First of all there was several checks that aggregated



(Testimony of Hugh Mackay.)

\$10,036.18, then there was one check of 750. There was another check of \$1,000, then I gave Mr. Root—on the Colorado National Bank in payment of amounts of money he got before that. That belonged to the estate, excepting this 750, but I put that in, also. Then, I gave him a check for \$100 on (indistinct) and that made \$10,886.18, in addition to that. There was an item of \$250 that was between us that was charged in there in cash. That was all in. Then we figured interest from the date of the checks to August 2d, that is the date of the mortgage, and I think that interest there amounted to \$120.63, outside of this \$3,000 spoke of. Then he had a loan of \$14,000 that he received, and the interest was back a year and a half, at 6%, and I told him we would have to do something with that, and that was included in there. There was interest on it for a year and a half, \$1,680, I think was the amount. Now, figure out how much that is, and [49] then there was \$3,000 I speak of, and the interest on that. That was the 3,000 that we lacked, but I had exchanged that with Mr. Root for something else. That something else was—it was a charge against him. I had \$2,500 in notes and some bonds, secured that from Mr. Root in another matter altogether, and there was \$2,500, and I said, You do so and so with me, and I said, “We will apply that on it,” and I said, “I will give you the rest in cash pretty soon.” He said, “All right, we will fix it that way,” excepting that he said to me, “Well, just give me a little memorandum, anyway you want to, and when I get back

(Testimony of Hugh Mackay.)

to Denver I will hand you the currency. I said, "All right." So that is the way we did it. When I got back gave credit for it and I applied that other note against it, and since then I got my money at different times until there is—everything is square now, a long time ago. The 3,000 for which I gave him a due-bill is included. I exchanged with him. I charged that up to him against it, and paid the rest in cash. I credited Mr. Root with the \$2,500 and gave him some cash money. Yes, sir; when he came back—he started East and when he came back again in two months, I gave him more than that, and there might be other things between us personally, but not a great deal, but there is several amounts I helped him get and I had some of them to pay since that happened, before went to New York. There was an understanding that this mortgage should not be recorded unless sold. He said, "I don't want you to record it. I am going to get the money"; and he had some big deals on, and I thoroughly believed he would get it, and I wanted to help him all that I could to get it, but he didn't get it, and, I didn't know [50] —I told him I won't record it just as long as I could hold it off. Well, it would interfere with him more or less, he thought, and then he might get a larger amount himself. In fact, he tried to, but people didn't seem to want to loan him, and he didn't get it. If he would get a larger sum he would pay this off. I withheld the mortgage at Mr. Root's request, of course. Well, he simply told me not to put it on, because he was trying to arrange a sale



(Testimony of Hugh Mackay.)

or loan or something, and if it went on record it would hamper him doing so, and I believed that it would and withheld it, and he gave me his word and honor that he would not allow any other encumbrance to go against it as long as he could possibly hold it, and he told him that condition when he gave that first mortgage and I found it to be so. [51]

HUGH MACKAY, in rebuttal on direct examination, testified as follows:

About the 2d of March in New York, Herbert Root came to me and said he had a telegram from his father. He wanted me to go through to New York at his expense. I told him to send the money. Well, he said, he couldn't, he didn't have it, but he would pay there, and I went; and Mr. Root and Walter Root were at the hotel where I stopped, the McWelton Hotel. He was in bad shape for money, with hotel bills and different things, and he had a deal on where he was going to get a large sum of money, and I should help trying to raise money. The plan was first, he would make a new mortgage, if he could arrange with some one, make a new mortgage on this Arizona property, this Norma Mining Company property, provided we could arrange it with some one, and then he would pay up this \$16,000 mortgage and have some money himself; and there was another man and myself there and we couldn't do anything, so finally we tried on a second mortgage, but no, nothing could be done. Then, after nearly a month waiting and nothing doing, I got ready to come back to Denver. I told him, now, Mr. Root, I said that I



(Testimony of Hugh Mackay.)

might try to sell a second mortgage in Denver or to raise money some way for you, if I can. He claimed that if he got \$4,000 it would put him on top, etc. Well, the mortgage was prepared—this \$5,000 mortgage, this second mortgage that I got now was issued, and I was to come on to Denver to try and sell it or buy it. I was [52] authorized to sell it for \$4,000, or take it for \$4,000 either thing. I came to Denver and couldn't get any—and a couple of days after I reached Denver, his son followed me, and he said he was in terrible shape. They had made checks for \$1,800 on the German-American Trust Company, and they had no money there, and it was nearly four o'clock, or half-past three. And he told me, "If those checks are not paid, we will be ruined, because it *will this* deal," etc. Well, I went and gave him a check for \$1,810. Plaintiff's Exhibit "H" for identification is the check I gave Mr. Walter Root. I gave him a check for \$1,810 and I decided first—Well, I would raise the rest of it in some manner or another, and it took me some little time, but I paid first a thousand and then fifteen hundred. I was all through. I made another payment. I have a statement where they figured it out. I must look at it. \$1,810 then there was a check for something else—80—1810—80 dollars. Plaintiff's Exhibit "I" for identification is the check that I gave to Mr. Walter Root. That is in this statement here. The next payment may have been two checks; 255, I think it was in two checks. These two checks make up the total of two fifty-five dollars. The next payment in

(Testimony of Hugh Mackay.)

a check was \$1,000; the next payment, five hundred; the next payment, one hundred and twenty-five dollars. The next payment balances the account, and if I am allowed to explain it, I will. There are several items here that I did not mention. How is it, can I explain this. Well, the reason of this money. I was given to understand and pressed by Mr. Root and his son to get it under all circumstances, at any expense, they would have to have the money, and this account was in my expenses when I [53] was in New York, and he paid back certain amounts that is included in that, too, but in this matter I had to pay on one loan of two thousand, forty dollars commission. That was agreed upon; and there was on another a discount of about a hundred dollars, but this is—it is the whole transaction, when I left New York until we finished, and the last I got in the account was a balance of \$183.58. This statement was made right there at the time and every item put on and every transaction. It is the original, and figured up by both of us. It has been attached to it ever since. Plaintiff's Exhibit "P" for identification is a check that I gave the hotel at Cheyenne for expenses and in this check that I gave Walter Root—that was between five hundred and a hundred and twenty-five—they wanted that—that is included in here. Plaintiff's Exhibit "P" for identification, I gave to Walter W. Root on account of that mortgage. The amount of that is seven dollars. When I got the amounts there at Cheyenne, he told me to pay this, as he needed it—he got so much—and he said,



(Testimony of Hugh Mackay.)

“Let me have a check for \$7.” I said, “All right”; so it was included in there. In addition to the amount, as represented by these diverse checks introduced in evidence, charged up against the second mortgage is \$4,370, and in that, the expense to New York and back and the expense of commissions getting this money is charged, and Mr. Root has paid certain amounts that are there, so the whole thing balances \$4,370. That is the whole transaction. The amount of the checks introduced in evidence and the expenses about the second mortgage, obtaining the money, commissions, travelling expenses to New York and back, make up \$4,370. I spoke of his having paid some amounts on that \$4,370. They were credited. [54] The amount of the mortgages that were to be paid was \$4,000, the other was expense. The expense was paid by Mr. Root. I said the \$4,370 was the total of the cost of the transaction, with expenses, etc., but Mr. Root paid all excepting these checks. He was getting \$4,000, and there was expenses to New York, etc., in obtaining the money, that he had paid. He was to pay my expenses back to New York, etc., that was the absolute understanding, and the whole transaction is right here. I paid Mr. Root on account of this second mortgage \$4,000 less the small commission there. Well, the absolute understanding was on that mortgage that if I should get \$4,000, would get \$1,000. That was I and Mr. Root’s strict understanding with me and furthermore—I was to get the additional \$1,000. Before I got away from the hotel, he had receipt made for this



(Testimony of Hugh Mackay.)

mortgage. The receipt is in evidence here. "Well, you better sign this," he said; and I looked at it and I said, "This is five thousand." He said, "Well, take it, never mind, it will be all right, all right between us, just go ahead." "All right," I said, "I will take your word for it, take your word for it"; and he come with me to the depot and he told me, "Mack, if you can, get this money, because," he says, "I have everything along ready to get on top, big deal on." I have paid several amounts that I had to guarantee for Mr. Root and I had to pay them, and he did not get his deal through, and I just gave him credit for it. Plaintiff's Exhibit "Q" for identification was for money for Mr. Root, and I had to endorse it and secure it and I had to take it up. I put that in. Mr. Root never paid that back. I gave him credit for it on this thing; gave him credit on the second mortgage for that amount. Plaintiff's Exhibit "R" [55] for identification is the other one. I gave him credit for it. I endorsed the note and had to give security for it. I paid the note. Mr. Root never paid me back. I gave him credit for the amount of this note on the second mortgage.

Introduced and read in evidence.

Witness then resumed, testified as follows: He wrote the receipt. He signed it himself. Mr. R. T. Root. In reference to the farm at Boulder, Colorado, there were two transactions. In 1910, March, Mr. Root took me up to Boulder to show me this piece of land. He wanted to borrow some money on it, and it is a piece of dry land, so I went up with

(Testimony of Hugh Mackay.)

him and looked at it and tried to find out the value, and finally I concluded that I would let him have a thousand dollars on it, which I agreed to do and did so and he gave me a deed to it along with a note or checks to hold, and I held it until about—on the 31st, I think, of August, 1911, got some money and we squared things up, and he paid it back, he paid this and some other checks he got, and “now,” I said, “here is your deed,” so I gave it back to him. Then I got another deed on the 2d of September, 1911, and a check for \$4,500. I said I received a warranty deed to that piece of land and a check for \$4,500 or Mr. Root’s and against that I let him have some money on his checks, just temporarily. He agreed that he would pay the checks any time it would be necessary, cash the checks, and that thing ran along. I was away some time out of Denver, and it ran along for some time and it was increased, and finally the matter became—or it came to the point where wanted to fix it up. He carries it up to the first mortgage, and, probably before the first time I had it [56] recorded, I think probably I did, and I had thought the land was not valuable but, at the same time I did not want somebody else to interfere, because there was suits and I was afraid of judgments coming against it and things of that kind, so I just put it on record. I told him about it. So it remained in my possession. This \$16,000 transaction was before the Los Angeles transaction. I had the deed all the time. About this Boulder farm or that deed in the transaction at Los Angeles,



(Testimony of Hugh Mackay.)

about the \$16,000 mortgage, we talked about it. I told him I would do whatever he wanted about it. I told him I would deed it to himself or anyone he said. He told me just to leave it stand as it was, with the expectation that we would get the money pretty soon from other sources and he would pay everything up. Well, according to my accounts, it will take about \$4,000 to square up over and above the two mortgages. The value of the piece of land in July, 1913 did not exceed \$1,200. It is worth about the same now. It is just a dry piece of land near Boulder, and kind of rocky. You can't get water on it, so it has practically no value unless something should turn up. He was figuring on oil, sometime. In the meeting testified about at Mr. Lowry's office, in July, 1913, in Denver, I saw stock of the Norma Mining Company there. R. T. Root had it. I think there was there, I understand, 300,000 shares. He showed me the certificates. They were signed by the company, and they were assigned by Mr. McDermott. They were issued to Mr. McDermott and assigned in blank by him. Mr. Root had them right there. He said he owned them all, with the exception of two shares, and they were in the names of two directors, to qualify for directors, Mr. Lowry and W. W. Root. I [57] didn't pay much attention to it, but I think he did show me them and said, "Here they are," These monies involved in these suits were monies—the whole transaction took place and the mortgage was executed and the money loaned after the death intestate of Mr. Miller.



(Testimony of Hugh Mackay.)

After the execution of this mortgage in Los Angeles, this first mortgage, I saw Mr. Walter W. Root in Denver, Colorado. That was after I came back. When I saw Mr. Walter Root, he put the seal on first mortgage. That was in—July, August, September—about September 1st; might have got back during August. When he put the seal on, Mr. Lowry was present. I know Mr. Herbert M. Root, Mr. Root's other son, very well. I had conversations with him about these mortgages. We talked them over numerous times. Said they would be paid and that Mr. Root would make a turn and get money, all the time. They were anxious. This \$4,500 note—check—I just put it in the vault and left it there until I gave it back to Mr. Root. I never used it in any shape or form. Plaintiff's Exhibit "F" for identification is the same property as described in these mortgages. They belonged to Mr. Root. They were in the name of the Norma Mining Company. They are the same property as involved in this suit or described in these mortgages.

Offered and read in evidence.

Cross-examination.

Witness then resuming testified as follows: The check dated September 2d, 1911, for \$4,500, signed R. T. Root, and payable to me as executor, is the check that I have just referred to in my evidence. I expect it is. I have no reason to think it is not. I just handed it back. I did not advance money at the time [58] that Mr. Root gave this check. I think I did at that time, September 2d. I advanced

(Testimony of Hugh Mackay.)

the sum of two hundred and something, on the 5th. That is my recollection. Mr. Root was not indebted to me in any sum whatever at that date. No, I think we were square on that date, even, I mean. It is not a fact that Mr. Root had cashed some checks which I did not want to cash, for my own benefit, on the executor's funds, and that there were some amounts of that kind that had not been settled that I had not paid Mr. Root. Not on the 2d. Well, I couldn't answer that question if Mr. Root cashed checks amounting to \$1,060 for me, where I would sign the check to his order and he gave me the cash for them unless I see something to remember about it. If I did, I accounted for it, that is one thing certain. Now, tell me the time it was and I can tell you. If he did cash checks for me in the manner described, prior to that time, I don't remember now, can't tell right now unless you call my attention to the time. There may have been once or twice where he loaned me small sums and may have done it that way. Now, if I would know the date I will tell you anything of that kind that happened, but anything that did happen we kept track of it. The statement of account dated July 15th, 1909, I suppose I must have seen it. Those checks, \$1,060.25, I borrowed of Mr. Root. That was the way that was at that time. That first transaction about that ranch in Colorado, that was in 1910, February or March. Well, I will say this myself, that I have an account of these items myself. What I mean is, the dealings we had at that time, you see, because I had, during that time, bor-



(Testimony of Hugh Mackay.)

rowed from Mr. Root a certain amount two or three different times. [59] No, I wouldn't say that I borrowed it in the manner described. Well, I couldn't say that I sent checks, signed by me as executor, to Mr. Root's office. I will say this much, that if that happened, of course it was a matter between him and I and nothing else. No, sir, I didn't say that when I made that statement, which was marked for identification, that the amounts which Mr. Root had thus advanced were included. No, sir, I didn't say that. When the account was purported to be balanced as of August 31st, 1910, it did not include such amounts as Mr. Root had made me personally. There was a small balance, old balance, before that, during the term of that matter. I did not say that I went to Mr. Root and said to him that I desired, because of the demands of some of the heirs, that he give me a check for \$4,500 and make this conveyance of this farm and sign a statement that he needed the money himself, and which I would hold and ultimately return to him the check. It was his own proposition but never used, see. It was for himself. Why, I did have the letter which he signed at that time. Why, yes, that is a copy of it. Yes, you see, with this check; yes, sir, but I never used it for anyone else or myself. I told him that I had or was going to make a statement. Yes, and I told him I had everything except I had a check of Ross'. Now, I said, I didn't know whether he would be ready to pay it or not, in case it was required, you see, and Mr. Root says, "Well," he says, "I will



(Testimony of Hugh Mackay.)

make a deed to this land in Boulder"; and he says he will make a check, "and if you need it you can use it"; and he says like that, and he did. I didn't need it. I says, "Mr. Root, I don't need it." "Well, all right, keep it, I will use some of it. [60] myself." That is all there was about it. This check for \$4,500 never was used. It was handed to me, but that same forenoon I handed it back. "Just keep it," he said, "because," he says, "I may use it myself." I did hand it back that day, right that day. I kept it. I am holding just now (letter admitted, marked —) I said I gave Mr. Root some money on September 2, 1911. The date of the check. If I took Mr. Root's check for it, I didn't keep it. I don't think I took his check as executor for the amount. It went against this particular check, everything, but it was kept track of up until it reached certain amount, and I held that check right along, that is my recollection of it. Whatever check I got, I gave it back. The other was the amount of the one that was before. The farm was held as security, that check and the farm. I did receive some checks signed by R. T. Root, which I held for the several amounts named. I don't know, but he gave checks for some, I know. I think not for all of them. I did not get checks for the whole loan. I can't tell from this which ones. I did for some of them. It is a fact that on June 9, 1913, those checks which I held for these loans were taken up and a new check given for their aggregate sum, with the interest on the several loans from the dates they had been made.

(Testimony of Hugh Mackay.)

The endorsement on the back of this paper is my signature. (Defendant's Exhibit No. 32 introduced in evidence.) This check of \$4,986.42, was one of the items that went into the Los Angeles transaction. One of the notes, given on August 25, was for \$3,250. While it was given on that date, it was dated back to April 22d, 1913. I did not give Mr. Root any money on that date. He gave me credit for \$250 that he had received, that is, one [61] hundred and fifty and one hundred, that left \$3,000. That is the way we fixed it. That note was payable to me as executor. It is not a fact that I explained on that date that I had used funds of the Miller estate of that amount and desired a note and receipt acknowledging the receipt of the money, in order that I could show to the heirs of the Miller estate. I told him that if he would arrange it that way that I would fix it with him on a certain note, bonds, that we had between us, and pay him the balance in cash. I told him I was needing money, and if he would arrange it that way, I would take the whole mortgage, and he said it would be all right that way. Well, I gave him on that same day my obligation for \$3,000. I made him due-bill and I returned to Denver. We was going to fix the matter up, that was our understanding absolutely. I did not pay him any money that date. At a later date, yes, sir. I gave him my obligation for \$3,000 and he gave me an obligation for \$3,250. That, he did not receive any money on. He received \$250 prior to that time, the balance he did not receive. It is not a fact that that \$250 was



(Testimony of Hugh Mackay.)

a part of a check for \$750 that he had given me, I only advancing \$500 and charging him an extra \$250. I don't know there was such a transaction. Whatever transaction there was, there was some proposition of his. He gave me check. There is one of those checks he gave me for \$750. He wanted to go to Kansas City and I gave him five hundred myself. I gave him seven fifty. He had given \$1,000 to me on June 19th, as the record already shows. The difference between the \$9,036.18 plus the \$1,000 he gave me on June 19, 1913, or a total of \$10,036.18. That seven fifty check of his was one. He got that check for [62] seven hundred and fifty and he got one hundred dollars in cash. He got one hundred dollars on July 24. Yes, I think that is the last one he got. There was a note also executed under that date, for \$1,550, but given a date of May 25, 1913. That note made up of the personal check of May 29th, 1913, for \$750. Only one check for 750. Root came to me—that was a personal proposition. Root came to me—he was going to Kansas City on some scheme or another and he wanted money, and he told me he would give so and so. He wanted to meet me first himself, and he gave me this check. This 750 check. That is the only thing. And then to make the rest of the \$1,550 of this note, I held his check payable to me as executor, dated May 23d, 1915, for \$500, and another check dated June 11th, 1913, for \$300. Then, the 750, 500 and 300, constituted that note for \$1,550. Then there was a note also for \$4,455 to which I gave a date of September 16th,



(Testimony of Hugh Mackay.)

1911. And then there was a note for \$1400 to which I gave a date of December 13th, 1911. There was a note for \$1,655 to which I gave a date of December 19th, 1912. And there was a note of June 19th, 1912, for \$1100. And then there was a note dated August 25th, 1913, for \$3,590. This note purported to be made up by interest which I computed on the Lowry loan for \$1,680. He gave me a receipt for it—Mr. Root. What constituted the balance of \$910 is the interest. We went back to the original amounts instead of the checks. We went back to the original amounts instead of the checks. You understand. See. \$4,455 from its original date and counted the interest straight through on each sum, and then that would make the \$910. Just made a note for interest from August 2d. That is [63] the way we did. It was paid to August 2d. Mr. Root was to pay some money when he got back to Denver on a deal we had. There was notes and bonds—\$2,500 transaction—went back to Kansas City some time, some years before. I refer to two notes of \$2,500 each. Of the Treasury Mining Company, for which you hold bonds as collateral. And \$2,500 was all the money I advanced. It is not advanced. I will explain that. Mr. Root was owing money. [64]

In 1912, in December, or November, rather, Mr. Root came to me and told me that he had a deal back East, and if he had \$2,500 that he would surely get it through where he would get a hundred thousand dollars worth of bonds as well. Well, I said, "I

(Testimony of Hugh Mackay.)

have not got the money," and I said, "Get it yourself." Well, he kept coming to me and trying to get me to help him. That was the way he put it. I said, "I can't risk it, Mr. Root." You see? Well, he kept on and on. "Now," he says, "I will tell you," he says, "I will have you put up \$2,500," he says, "and I will get this deal through and I will pay you when I get back in ten days, \$5,000." That is the deal. Well, I told him I was afraid, and I didn't get the money, and he kept running after me until I set out trying to get it; and after I gave him the money, he hands me The Norma Mining Company note, not the Treasury Mining Company note, hands me their note, and five bonds that he was to pay if he got the deal through; and I took the chance, and these notes were not worth a cent. I knew they were not, but if he got his deal through they might be worth something; and I went and borrowed the money and give it to him, first gave him \$1,200 and then \$1,300. All I advanced was \$2,500. There was \$2,500 paid on the note, but there was \$5,000 due. I asserted the right to hold the notes for the extra \$2,500 commission. It was in 1912. Well, there was \$2,500 paid on these notes in January, 1913. I understand that Root referred to that transaction when he said he would go back to Denver and pay some money. Root wanted me to do this for him, so he said, no, he said, he couldn't get anybody else to do it, and if he didn't get it through, he would be ruined. He said if he got this money—he owed \$250,000 and [65] he had these notes with the



(Testimony of Hugh Mackay.)

Moffet estate and he could pay it off for \$48,000 if he got this money. Well, I said I would do it and take a chance if he didn't get it through. I took the chance. That I went there to Mr. Root, after he had paid the \$2,500, and asked him to let the Treasury Mining and Reduction Company pay the full \$5,000, although they had only had \$2,500 on account of it, and agreed that if he would make that bargain that I would give him \$700 bonus is an absolute falsehood,—absolute. Never heard of such a thing in my life. I paid him \$2,500. I was to get 5,000 if the deal went through. He gave me that note for \$5,000 and bonds to secure it. It did go through. And he came back and he got the money. He paid 2,500, and he said, "Now, Mack, will you wait a little for the balance"; and I said, "I suppose I will have to"; and I never heard another word about that until we were down at Los Angeles, and I told Mr. Root, "I would like you to do this thing," and he says, "All right." Exchange this for another note. In about a month afterwards, or maybe less, I have the dates of it, he told me to wait a little. Mr. Root came to me one day and he says, "Say, Mack," he says, "I have now the money arranged for all those bonds"; and he says, "let me have—and I will go and collect the money in Kansas City, and I will come back within ten days and I will give you the cash"; and I said, "All right"; and he made out a receipt to take the bonds, to return the bonds or pay the money within ten days. He got those bonds and sold them. He got the money and he didn't pay. And that is



(Testimony of Hugh Mackay.)

the way that he wanted to get this thing fixed. I wanted that amount included in the mortgage that was executed in Los Angeles. He made note for it and I gave him a due-bill [66] for the amount and charged up this note against it. He told me, "Whenever I get back to Denver I will have some money and I will give you the cash," and then I was to pay the balance. That was the strict understanding. He took the bonds away from me. It was his own proposition all through on that 5,000 business. That \$2,500 is embraced in one of the mortgages. That is what I was getting in the account. I gave him a due-bill for so much, and credited him with paying this \$2,500 note, when he got back from Los Angeles. I arrived at the amount of the first mortgage in this way. The first mortgage was the amount of money that was loaned to him exactly plus interest and plus interest on the Lowry loan made for him of 14,000. That would leave a balance of \$3,000. You see? And we had in that \$3,000, and he made a note for it, too, and I gave him a due-bill for the amount that he had not received of it, and we was going to arrange it in this manner when he got back, but he didn't stop when he got back. The \$2,500 is in the first mortgage, in the amount of \$16,000. These endorsements of interest on the back of the notes that have been offered in evidence were made on that date, that they were executed. I refer to Exhibits 9 to 16, inclusive,—on August 25th or 26th. I mean by saying September 19th the average date—well, for different items that were embraced in these

(Testimony of Hugh Mackay.)

notes. I want the Court to understand that this \$16,000 mortgage I took as collateral to the notes received on the 25th, as security. Mr. Root and myself were present when that agreement was made. The conversation was in the hotel, on the 25th or 26th of August, in Los Angeles. There was a \$3,250 note, and also my obligation for \$3,000 to Mr. Root. There was—the only amount was \$3,000. The obligation I gave him. There was 3,000 of the amount unadjusted when I [67] left Los Angeles for which I charged up 2,500 and interest on these notes and bonds I spoke of and then I since gave him the difference in cash. The difference in other checks, outside of that. I will produce them. I have those checks here. I did not in a report of the affairs of the Miller estate show a credit of \$4,500 under date of September 2d, 1911. Never exhibited that to anyone, excepting Root, nor used it in any manner, shape or form. The \$3,250 not yet taken credit with the Miller estate for that. It is a matter between him and me so far, nothing filed. There was no other contract with reference to that money. Mr. Root knew that I credited or charged the amounts which I had paid subsequent to the \$1,810 to the Norma Mining Company second mortgage. I advised him as soon as I came in here from the—I had the mortgage there, and when we finished up the transaction. That is all the advice I gave him, except that I was trying getting the money on it. I have the memorandum from which I testified this morning. I advised Mr. Root that I had credited myself on the sec-



(Testimony of Hugh Mackay.)

ond mortgage for these sums, subsequent to the \$1,810. I had finished my transaction, paid what I was going to pay. I advised him a dozen times. I have seen him over and over, and told him so. That money, aside from the \$1,810, was not covered by any other contract. No contract whatever; no, sir. The only thing that was understood, I couldn't get it without selling or paying up certain things, had an option to raise it, and I wrote and told him unless he agreed to make good any loss I would have, provided he didn't pay within the time specified, he would have to stand the loss in addition. That is the letter I wrote him—unless he would agree that he would pay the loss that I would have. I went and borrowed the money to [68] pay the balance on this mortgage. Now, if he didn't pay back in time he would lose it, and he lost it. That is exactly what I mean. (Letter put in evidence, marked #33.) Mr. Root accepted that proposition. I would not have gone further unless he had. When the meeting on July 19th, 1913, was held, it was understood that I would undertake to sell the mortgage. This is the same mortgage that was finally delivered on August 2d. It didn't say \$16,000. The authority was for certain sum to be executed or issued in amounts or on such terms as Mr. Root should decide. The amount, etc., was left for Mr. Root and myself to determine. I didn't know whether anything could be done with it yet at that time. There was no trouble at the time. I just wanted to try and get the money in some way. I thought I had got it



(Testimony of Hugh Mackay.)

arranged when that resolution was passed. On that event, we might get it arranged. That was a step towards doing so. This was done on June 19th. That is my absolute recollection. Instead of saying June 19th, I should have said July 19th. My recollection of it is that it was on Saturday and I am positive it was either on Saturday or before Tuesday before we left. It was impossible that it be farther back one way or the other. Well, Mr. Root—in the first place I couldn't then take the mortgage and give back the checks. I needed the money, and he didn't know we could handle it or any means we could handle it, and decided when he would go he would be prepared to do it before going and if couldn't get the money otherwise then he would execute mortgage for the amount we might obtain or the amount we might think we could handle. Now, that is exactly— I went to Los Angeles and tried to see what I could do with the mortgage there. I did have a mortgage. Before he left—he drew it before he left [69] there, but it was not made until he left, because I had nobody in view. He wanted me to go and see a man in San Diego. I didn't go to see that man. I didn't know the people there, and I thought it would be hard to do anything with that kind of property there. That is a letter written to Mr. Root by me. (Letter marked #34.) (Letter of Mr. Root's, July 24th, marked for identification, read in evidence, marked #35.) About five or six days after reached Los Angeles made arrangement as to how much the mortgage should be. Probably the

(Testimony of Hugh Mackay.)

day before the 2d—then decided on that amount. The day before the 2d, probably. During the first—it was left until we found out whether money could be got in some other way. He expected some money and didn't know what amount should be made, and it was finally decided that it couldn't be more than that. (Letter to Mr. Root, August 1st, put in evidence, marked #36.) In statement of the payments made subsequent to the \$1,810, there was a note of November 24th, 1913, for \$450. Mr. Root received that money, but not at that time. That note he received it, I think, few days before then, and this is security I gave him. He got it on that security, and then I went and got that from him and gave the amount as a matter of security. That was the way that was. He got the full amount. On December 1st, 1913, there was a note likewise guaranteed by me for \$500. He got the money at that time. I gave him the other two checks myself, checks for them, the other two items, I think. I said I had to borrow the money to pay up that stock, got an option on it for sale, in order to get the balance for the mortgage. I went and borrowed the money for the ownership of the boats, and gave the bill of sale described in the letter which I introduced in evidence.

[70]

#### Redirect Examination.

This boat stock belonged to me. It was my own asset, and received the money on that transaction to pay on the second mortgage. That amount is included in the checks that I have testified as constitut-

(Testimony of Hugh Mackay.)

ing the amount of that mortgage. The first mortgage of \$16,000, the checks and amounts aggregating as claims, is over \$10,000. The items constituting the remainder of that, I can state exactly. I will give it to you here now. There were four or five checks that aggregated \$9,736.18. There was one for 750. I should say \$9,036.18 to start with. Then one for \$750. That check is not in evidence. Check for one thousand, July 24th. Well, I got interest. There is no more checks. Those are all the checks. The interest—one item, \$120.63. Interest on them checks at variance from long back, from August 2d, 1913. Some interest we fixed on checks before, and that was understood. Then comes interest on the \$14,000 loan, 6% from August 24th, 1913, together with extension of said loan for two years, \$1,680. Then there was 150 and 100. That is \$1,800.63. That is \$12,686.81. [71]

I had one charge of \$150 and \$100 paid Root for his account and that was a hundred and fifty that I figured he failed to deposit at one time and a hundred, something else. It was money that I paid out. The way I had paid out money that I paid out, trips from Cheyenne on account of Mr. Root's request, that is the way that was. That was \$250, and that leaves of the \$16,000, that leaves \$3000. It is \$3000 and the amount was dated April 22d, and the interest from that, on the three thousand from that date and one of two hundred and fifty, to August 2d, made \$63.19, and it was credited on the back of the note. This note for \$3,250 was not dated to make up these



(Testimony of Hugh Mackay.)

items that are still left, was not dated on the date it was given, but was dated back to April 22d. I credited the interest on the \$3,000 note from April 22d to August 2d. Defendant's Exhibit No. 12 is the amount that I credited, and that amount is \$63.19. The endorsement on the back of that note is the interest credited to August 2d, 1913, \$63.19. I included that in this statement. That goes to make up all of the \$16,000.

My understanding with Mr. Root in regard to that was that I pay three thousand dollars and I told Mr. Root if he would make a note and date it April 22d for three thousand dollars and I would charge up Root this twenty-five hundred dollars and interest to that date, and I would pay the difference in cash, and Mr. Root said that he would fix it up that way, and he says, "When I come back sometime, I will have money and I will just hand you the cash for that and you apply it on this." I then gave him the due-bill for three thousand dollars that would be due him on my return to Denver. The three thousand dollars mentioned is represented by Defendant's Exhibit No. 19.

The COURT.—This is not dated April 22d.

HUGH McKAY.— [72]

Mr. STONEMAN.—No, these notes are dated April 22d, notes for \$3,250. Here is the receipt of Mr. Root for that note, for the money, rather.

HUGH McKAY.—This amount, or this I. O. U.—well, when I got back I expected Mr. Root would be back in a day or so, but when he came back he went

(Testimony of Hugh Mackay.)

straight off East and I didn't see him and I had no chance to talk to him at the time and I had this five hundred and interest charged up, a separate and different set of notes, being secured by bonds. The bonds I testified to this morning had been taken by Mr. Root and sold. He paid so much on them, and I credited on this three thousand note there remaining unpaid on these two notes, \$2,568.40, and interest, \$50.43 on that to September 1st. \$2,168.30, that would make. That \$2,568.40 was the note that he owed me on that transaction in which he was to give me a bonus of twenty-five hundred dollars. That leaves a balance of \$439.56 that was paid. From November 26th to December 1st, I have Mr. Root items amounting to thirteen hundred dollars. On August 2d, there was a balance due Mr. Root of the difference between \$2,618.83 and \$3,000, and he also figured on the interest on three thousand dollars from April 22d. I gave him \$58.39 interest, and then kept interest going on the others and it left a balance of \$439.56 for me to pay. I paid in November \$1,300 which paid it up. I paid it that way, it applied on that and anything I would owe.

The COURT.—Before you get away from that, give me that note dated April 22d. Now if on August 30th, 1913, Mr. Root owed you this \$2,568.40 and the interest, why did you give him your note or due-bill for \$3,000?

Mr. McKAY.—Well, I told him that would do, that way. He told me, "Just you give me a memorandum of the amount it is and," [73] he says,

(Testimony of Hugh Mackay.)

“when I get to Denver and have money, I will hand it to you in currency and you can hand it back to me.” He had not ever handed me anything, but I had handed him \$3,000. But I had the notes, five thousand on which twenty-five hundred dollars has been paid; not in evidence, but I have been testifying about that. Plaintiff’s Exhibits “T” and “U” for identification, these are the notes which I have been testifying about upon which there was a balance of \$2,568.40 due to me. I suppose this is a mistake in date; I refer to the due-bill that has been introduced, which is dated August 30th, and that says September 1st. Plaintiff’s Exhibit “V” for identification, before I leave these notes, I got that from Mr. Root. I have paid him the twenty-five hundred dollars and the expenses connected with it. The checks are all there, checks on the National Bank. I made these endorsements that are made upon here. There is the endorsements that he made, himself, of amounts underneath there. That was the first endorsement pursuant to an arrangement with Mr. Root. The second one I just charged it up to him. The understanding was when he returned he would hand me the currency for it and I would hand it back to him, that is the way he put it. He called me up and went on east and he wasn’t back much before probably November. I told Mr. Root in regard to this. I told him that I would credit him with the amounts. I told him that in Denver after he came back there. Oh, I think it was probably



(Testimony of Hugh Mackay.)

six weeks or two months before he came back there. It has never been questioned by me.

(Plaintiff's Exhibit "V" read in evidence.)

Mr. ALDRECH.—It is obviously a mistake in that. It should be January 19th, 1913.

The COURT.—Give me that and I will change it. I will make [74] it read 1913 in red pencil.

Mr. HUGH MACKAY.—The balance that was then unpaid on the notes was twenty-five hundred and whatever interest there would be. That is the 2,500 that I offset against. At the time of the execution of this mortgage and at the time of the endorsement on these notes, the books had not been returned nor the balance paid. It was never paid in any other way than by the credit agreed upon between me and Mr. Root. When I was in Los Angeles, I wrote Mr. Root a letter in which I stated, date of August 1st, that I would leave for Denver at four P. M. I didn't leave until August 2d, I believe I left on the second. I credited Mr. Root with the amount that he owed me on that old transaction in which he agreed to pay me \$2,500 for the loan of the money or a bonus or commission or something, but not before I had talked with him about crediting him on that note. I had talked with him before he left. I told him what I wanted him to do in this matter and, of course, he did it, and he told me when he would come back, he would have money and he would hand me currency to pay this and I would hand it back to him on the other.

The COURT.—Oh, well, I cannot understand that.

(Testimony of Hugh Mackay.)

Mr. HUGH McKAY.—Well, I told him that I wanted him to give me credit for the amount due on these notes in this action, this old \$2,500 note. I wanted him to credit that on the due-bill. I said, “You give me a memorandum of the amount,” and, of course, I didn’t have these notes in shape there and he said when he would come back, he would attend to it. I credited the \$3,000 due-bill with this \$2,568.40 and interest, and when he came back and went east, I just charged it up. I had no further conversation with him before I charged it up, but I had afterwards at different times. He said, “all right.” [75] I still owe the balance on that yet, and I didn’t pay that until November. I paid it by giving him two or three checks. I didn’t say anything about the due-bill, about giving it back. I never talked about it, I don’t think. When I told him that I had credited him with the amount, my recollection of it is that he said that would be all right, anyway that—fix it anyway that was right. I credited it on the back of the notes and then in a little memorandum book I have there. I credited it when he came back. That would be about September 1st. It might be a day or two later from that date. This pencil endorsement is in my handwriting.

The COURT.—It does not seem to bear a date.

Mr. ALDRICH.—There is the date, April 22d, long before the transaction.

Mr. HUGH McKAY.—I had it charged up in the book in account, so many dollars and cents. The way it happened that the endorsement was dated

(Testimony of Hugh Mackay.)

April 22d, 1913, was that my calculation was that way, at the same rate of interest and the interest on the \$3,250 so much of it would come at the same time, that was the reason I did it. I gave him something that bore interest and I noted the interest on this to apply from that date, you see. There was no one present when I had the conversation with Mr. Root in which I told him that I had charged him up with this \$2,618.18. I gave this due-bill on the date he left Los Angeles, and I got a note at this time, the \$3,250 note. I also got the mortgage on that date. The mortgage was for \$16,000. It was August 25th. There is the \$3,000 note, that is the one we are talking about, and the \$250 is in cash. I owed him \$3,000 after he gave me the note, note before, and I gave him my due-bill. He owed me [76] \$13,000. And I gave him a due-bill for \$3,000 to make up the difference. That is the difference right there, that 3,000 that I had offset with the notes here, you see.

The COURT.—Now, then, you claim there was another transaction in which it was agreed you might retain that mortgage to secure the several sums you say are represented by this mortgage. What I am asking you is what evidence you have to give corroborating your statement that there was any such agreement made?

Mr. HUGH McKAY.—Well, if it wasn't so I would be wanting to keep it nor anything else, and I so advised Mr. Root. It was absolutely understood. That is how I came to get these notes. I wanted Mr. Root to give notes to represent the



(Testimony of Hugh Mackay.)

amount of this note and mortgage to secure it, because I considered his personal note would make him more careful probably to get the money. This mortgage was delivered to me on August 2d to sell. It was delivered to me as my own on the 25th or 26th of August.

The COURT.—What do you mean by being finally delivered? Did he return it to you or you return it to him?

Mr. McKAY.—Well, I took it right there. I went back to the hotel, to Los Angeles and we fixed the matter up just as it stands now and I took it to secure it, and it was done right there. These notes were made and the mortgage held and given to secure the amount and notes represented. It was turned right down there on the desk, and, I can't sell it, I will do so and so, and all right, it was fixed that way. After that, I took it along and held it for that purpose. Mr. Root was the man that agreed to take all—I surrendered the checks for it, the checks that we had on the bank. I surrendered those [77] checks for the mortgage security right on that day in Los Angeles, the twenty-fifth of August, 1913.

Cross-examination.

This endorsement in my handwriting purporting to give Mr. Root credit for \$1,284.10 on this note was not made on April 22d, 1913—exhibits “T” and “U.” It was made at the time I came back. It was not made while I was in Los Angeles, because I didn't think that I had it with me. I made it after I came back a day or two, something like that,

(Testimony of Hugh Mackay.)

and the purpose of dating it back to April 22d, as I have understood it, was to stop the interest on my due-bill so that—not to stop the interest on that, because I would be paying interest on the other note and that was my way of doing it, either way. I gave credit from April 22 to August 2d to him in accounting for the three thousand, you see. This did not represent those credits. They did not represent cash. Those credits there, it don't represent the bonus, it is part of the transaction. I didn't advance it on those notes, (exhibits "T" and "U"), as I told you, I advanced it to Mr. Root for a certain purpose and this is what he gave me for it. I was not buying notes at that time. I don't know whether I showed the endorsements to him. It was a long time since I saw him, and when I did see him, was in a hurry. He hasn't been back for a long time. The endorsement also on the back of this receipt for the bond for Mr. Root, that was made by me also. I made a memorandum there that I had put the amount represented by the balance on these notes to his account on April 22d, because he did not return the bond nor pay the money as he agreed to. [78]

**Testimony of F. M. Lowry.**

F. M. LOWRY.

Direct Examination.

I have made a computation of the principal and interest on the two mortgages and the three notes that have been introduced in evidence in this case. The amount of the first mortgage and note at the present

(Testimony of F. M. Lowry.)

time, principal and interest, is \$17,974.19. The principal and interest on the two notes and the mortgage on these two notes at the present time is \$5,418.54. The total amount, principal and interest, of the two mortgages and three notes, principal and interest is \$23,392.73.

My name is Frederick W. Lowry, I reside in Denver, Colorado. I am engaged in the last few years in the handling and development of irrigated lands. I have been acquainted with Mr. R. T. Root for more than thirty years. I was admitted to the bar back in Iowa back in 1893 and 1894. I have not practiced long. I was in the employ of Mr. Root for a number of years. I never acted in the capacity of his attorney. Of course, I gave him the benefit of such legal knowledge as I may have had. I was never admitted to the bar in the State of Colorado. I have never practiced law there. Mr. Root often sought my advice; I couldn't say that he acted on it. I was in his employ continuously from 1894 until 1909, October, I believe it was, 1909, and not after that time. I did considerable business for him after that, helped him out in his affairs more or less, and I received some compensation. I left his employ in 1909, in the fall, to go to California. I came back in February, 1910, just a few months afterwards. Now, at different times after my return I performed services for Mr. Root, but not continuously, now and then, sometimes for a period of weeks. I presume it is safe to say that Mr. Root sought my advice in nearly everything. The relations of Mr. Root and



(Testimony of F. M. Lowry.)

Mr. McKay, and to the question of his borrowing money, [79] some money, and so on and so forth, I knew about it. I was consulted about it by both sides, by Mr. Mackay and by Mr. Root. I saw Mr. Mackay as agent representing Mr. Root on many occasions. I think Mr. Root had me take certain trips and paid my expenses, I recall one at any rate.

Mr. ALDRICH.—I submit this witness is not competent as a witness, your Honor, and am prepared to argue the question.

Mr. LOWRY.—I was secretary for Mr. Root during this time. I was not practicing law. I was not employed by him as an attorney in any respect at any time. In cases that he needed counsel or attorneys, it was his practice to employ an attorney. I did not act in the capacity of an attorney. We always had several on the staff. At no time was I employed by him as an attorney or in that relationship in any way.

Cross-examination by Mr. ALDRICH.

It is true that I was paid a thousand dollars in connection with the Moffat settlement. It is probably true that I may have said that I thought I knew something about the law, even if it might not be conceded that I was a judge of the law, but I did not act as his attorney in any of those relations or in any of that work. I may have acted as attorney *as attorney* and Mr. Root's legal advisor, consulting authorities and talking with him, telling him what the authorities were in connection with matters at the time this controversy arose.

(Testimony of F. M. Lowry.)

Mr. ALDRICH.—I renew my objection.

The COURT.—What were you paid a thousand dollar fee for?

Mr. LOWRY.—Mr. Root got into difficulties with the estate of David H. Moffat after the death of Mr. Moffat. There were large interests involved between them, involving the expenditure of approximately half a million dollars. The books [80] and accounts and records of Mr. Root covering these transactions had never been gotten in proper shape so he could make an accounting. There was none that, as Mr. Root conceived, could do that work and put the things in proper shape to make a showing in connection with the Moffat estate, except myself. Mr. Root came to me and asked me to undertake that work. I finally consented to give him a limited amount of time to put these matters in such shape that he could make an accounting. Now that work did not involve a long period. It was not the amount paid me—it was really worth more than a thousand dollars—that was not fixed on account of the value of services, but on account of loss in time that I needed. The service consisted of getting up these books and accounts, going into them, checking data, getting them in shape so he could make a clear explanation of the estate of Mr. Moffat as to the worth of accounts between Moffat and Root. I was acting more in the capacity of an auditor than anything else. I am a pretty good accountant, and have done similar work to that before. I did not charge him a thousand dollars, Judge. The matter was his own

(Testimony of F. M. Lowry.)

offer. It was for this work covering quite a period of time. I was supposed to be the best man to do the work because I was the only one outside of Mr. Root himself that was familiar with all of the transactions from their inception. I was in Mr. Root's employ from 1894. I had charge of the corporate books in all of the corporations and of his individual accounts; was familiar with all the items and the business transacted in the name of those corporations. I do not recall receiving fees at any other time. I had received compensation, of course, when I was in his employ regularly.

The COURT.—I understood you to say, in reply to a question propounded by counsel that you may have received fees. [81]

Mr. LOWRY.—I was constantly, at different periods for a few weeks at a time assisting Mr. Root off and on after I left his employ from 1910 on my return from California down to last fall. It was in various mines work, but it was help and assistance rendered to him in the difficulties he had gotten into in the Moffat estate and with others. I ran across legal propositions that he consulted me about, and looked up authorities and advised him. I went to lawyers' offices to consult the authorities, and sometimes he acted upon my advice. Oftener he did not. He consulted his lawyer and finally determined whether or not to act upon my advice. He had several lawyers always. During the period that I am about to be examined upon here on behalf of the complainant, I think I consulted with him on



(Testimony of F. M. Lowry.)

that and he consulted with me in regard to almost everything. He consulted with me with reference to holding this meeting of the corporation that has been referred to. That is, at the time it was held. I do not mean to say that he consulted with me before it was held as to whether it should be held. I was not paid anything for that service. I was consulted as a director and officer of the Norma Mining Company, and to procure my assistance in getting this thing through with Mr. Mackay. I was not paid anything for that service.

The COURT.—The witness will be permitted to testify as to all transactions except those in which Mr. Root consulted him as to the law and in which he advised him what his opinion of the law was. As to those matters he will not be permitted to testify.

Mr. ALDRICH.—If the Court please, I want to note an exception even to that. I think the rule does not go so far as your Honor is permitting. It is not a question depending upon whether he is paid.  
[82]

The COURT.—No, I agree with you. It does not depend upon the question of whether he was paid, but upon the question of whether or not he acted in a professional capacity.

Mr. ALDRICH.—I think it is a line very hard to draw.

The COURT.—Very well, the reporter will note the exception. (To the Witness:) In these transactions in which he consulted you and you men-

(Testimony of F. M. Lowry.)

tioned authorities and you gave him your opinion as to what the law was, you should not testify about, and when counsel asks you about any such matters as that the Court will rely upon you to state that that comes within the rule of the Court, and not answer the question.

Mr. LOWRY.—I am acquainted with Mr. Walter Root; he is the son of R. T. Root. I am acquainted with Mr. Herbert M. Root; he is a son of R. T. Root. I know Mrs. Root, wife of Mr. R. T. Root. I have known all these people twenty-five or thirty years; Mr. Root longer than the others. I know of the properties situated in the White Hills Mining District, Mohave County, described in the complaint in this case, and can give a brief history of these properties and the transfers.

The COURT.—I understood you to object to all that and objected to the introduction of the conveyances of the property of the corporation, did you not?

Mr. LOWRY.—No, sir; not that I know of. I do not remember that.

Mr. ALDRICH.—If the Court pleases, I want to have the record show that I am objecting on the ground that it is not in rebuttal of anything that has been offered, and on the further ground that the records of this state will show that Mr. Lowry participated in the trial of a case regarding the titles of the property as attorney for Mr. Root. [83]

Mr. LOWRY.—I remember participating in a case that was tried at Kingman, but I do not remember

(Testimony of F. M. Lowry.)

that I participated as an attorney. I remember being present at the trial, but not as an attorney of record. I undoubtedly took part in that case so far as handling it is concerned. I did not argue any questions of law. I do not recall at this time of being, on motion of Judge Hawkins associated with him in the trial of the case. I was a witness in the case. I do not think I examined any witnesses.

The COURT.—Well, if this witness has no better recollection of the facts or fact of what occurred, I would not permit him to testify as to any transaction involved in any conveyance of the corporation. He does not state he did not participate as attorney.

Mr. LOWRY.—I certainly did not try one case alone. I do not recall advising Mr. Root that Judge Hawkins was ill and that there was something the matter with him, that he trembled, and that I took charge of the introduction of papers and evidence in the case. The case that I have in mind was tried before Judge Sloan. I was present as a witness at some of these cases and also in the preparation for trial, but not as an attorney in the cases.

The COURT.—You participated in preparing the authorities and the propositions of law?

Mr. LOWRY.—Yes, sir, I did.

Mr. ALDRICH.—I renew my objection.

The COURT.—I will sustain the objection.

Mr. LOWRY.—This is the White Hills Mining Company, a different corporation from the Norma Mining Company that this litigation occurred about.



(Testimony of F. M. Lowry.)

The COURT.—Anything that relates to any transaction between the Norma Mining Company and the White Hills Mining Company alone this witness will not be permitted to testify to.

Judge BAKER.—Exception.

Mr. LOWRY.—I am acquainted with the Norma Mining Company. It was organized or incorporated in 1905, July 1st. The original and first directors of that company were R. T. Root, Walter W. Root and myself. The capital stock of the corporation was five hundred thousand shares divided into five hundred thousand shares of one dollar each.

Mr. ALDRICH.—At this point I desire to again object and to ask the witness whether he did not, as attorney, prepare the articles of incorporation?

Mr. LOWRY.—I prepared these articles of incorporation.

The COURT.—I will sustain the objection. I think he was acting as a lawyer.

Mr. LOWRY.—I was a director, vice-president and secretary of the Norma Mining Company. I became secretary of the Norma Mining Company at the first meeting, July 3d, 1905—July 1st, 1905, probably. While I was secretary, three hundred thousand shares were issued. Three shares, qualifying shares, for the directors were issued July 1st, 1905, one to R. T. Root, one to Walter W. Root, and one to myself. My own share was endorsed and left in the book. My recollection is that the share issued to Walter Root was the same, and the one to Mr. Root the same, except Mr. Root's was

(Testimony of F. M. Lowry.)

not endorsed. On July 3d, there were two certificates aggregating 299,997 shares that were issued in the name of E. G. McDermott. They were endorsed in blank by Mr. McDermott and delivered to Mr. R. T. Root. I know about the history of those shares after they were delivered to Mr. R. T. Root.

[85]

Such information as I have on the subject was derived by reason of the opportunities that I had in his service to observe what was done and what was said.

At the time of the inception of these transactions, it was distinctly understood between Mr. Root and Mr. Mackay and myself that I should represent Mackay in that transaction, and that relationship has continued in a greater or less degree ever since that as to Mackay.

The COURT.—I will sustain the objection to this witness' testimony.

Judge BAKER.—Exception.

Mr. LOWRY.—I was to represent Mr. Mackay from the beginning of the inception of these mortgages, in July, 1913. I have not represented Mr. Root in regard to these mortgages, but have represented Mr. Mackay so far as it was possible in connection with the fact that I was a director of the company from that time on. The two men came to my office in July, 1913, with the explanation. Mr. Root proposed, in the presence of Mr. Mackay, that I should represent Mackay, because Mackay had expressed an unwillingness to trust him in preparing

(Testimony of F. M. Lowry.)

these papers and seeing they were properly authorized and executed, and at that time, I expressly asked Mr. Root if he was willing I should help Mr. Mackay, and Root said he was, and Mackay said if I couldn't represent him that he would go to a mining attorney. Mr. Root was anxious that I represent Mackay, because he wanted the deal to go through and Mackay was anxious that I represent him, for other reasons. That was the inception of the thing. No, not as attorney. Well, I don't know. I was to give him the benefit of such legal knowledge as I had, undoubtedly. I was not a practicing attorney. The position was this: that at that time, I was [86] a director and secretary of that company, and Mr. Mackay was willing to trust Director Lowry and was not willing to leave those matters go to the president of the corporation, Mr. Root. That came out very fully at that meeting.

Mr. ALDRICH.—That is all subject to objections, your Honor.

The COURT.—The very fact that this witness said or asked Mr. Root the question whether or not he, Mr. Root, was willing that he should represent him, I think, up to this time, at least, up to the time it was agreed, if it was so agreed, that he should represent Mr. Root, shows that their relations were those of attorney and client and comes within the rule.

Mr. LOWRY.—My resignation was signed and left undated in the minute-book of the company from the time the corporation was first organized.



(Testimony of F. M. Lowry.)

I acted as secretary and director of that company.

Mr. ALDRICH.—To that we object, if the Court please.

The COURT.—Objection overruled.

Mr. LOWRY.—From the time of its organization until sometime in the fall of 1913. I kept the minutes of the Norma Mining Company. The minutes of the corporation, entered on the books, appearing at pages 12 and 13 of the same, are in my handwriting. Two meetings of the board of directors of the Norma Mining Company were held from its first inception up until July, 1913, excluding the meeting of July, 1913. Those two minutes, those two meetings appear upon that minute-book. The first meeting begins on page 7, and the second meeting begins on page 12. I saw this minute-book prior to this trial, about the middle of last year, 1914, in the office of Mr. Root—in the office of the company. I at that time examined the book. There was not a record [87] in that book of minutes as they appear now from pages *pages* 15 to 17. I did not call Mr. Root's attention at that time to the omission of the record of any meeting or of minutes of a meeting of the directors and stockholders held prior to that time. I saw the minute-book about the 1st of September, 1913, and at other times where I cannot fix the dates, between that and the middle of 1914. At the time that I saw the book in September, 1913, the minutes, as they now appear upon the book at pages 15 and 17, were not written out on the book, that is, 15 to 17, inclusive. Mr. Root wasn't there

(Testimony of F. M. Lowry.)

when I saw these notes in September, 1913. The minutes of July, 1913, meeting were in the book in typewritten form, loose leaf, not written out. The minutes were there of my own, in a loose form, of the July, 1913, meeting, but not recorded. In July, 1913, there was a meeting of the stockholders and directors of the Norma Mining Company.

Mr. ALDRICH.—We are objecting, if the Court please, to all this testimony.

Mr. LOWRY.—It was held at my offices in the Colorado Building, Denver. There was present at the meeting, R. T. Root, Walter Root, myself and Mr. Mackay. I was to represent Mr. Mackay beginning on this date.

Mr. ALDRICH.—Mr. Reporter, note an objection on our part to all testimony relating to the alleged meeting of July, 1913, and also a motion on our part—

The COURT.—The objection is overruled. Note an exception.

Mr. ALDRICH.—Yes, and we now move to strike out everything that the witness has said upon that subject up to this point.

The COURT.—Motion is denied. [88]

Mr. ALDRICH.—Exception.

Mr. LOWRY.—Mr. R. T. Root and Mr. Mackay came to my office in the morning of the 19th of July. Mr. Root said that Mr. Mackay was demanding that he, Root, should pay certain checks that he had given to the estate of George Miller, aggregating the sum of \$11,000, that he did not have the money to



(Testimony of F. M. Lowry.)

pay them and if given a little time, he would get it; that in the meantime, he proposed, in order to secure Mackay, to have the Norma Mining Company give a mortgage to Mackay. Mackay insisted or said in my presence that he did not want the mortgage, that he wanted the checks paid up, and Mr. Root insisted that the mortgage would be ample security. Mr. Mackay then said to Mr. Root, "Even if I take a mortgage you would tie some string to it so it would not be good." Mr. Root replied, "You would be willing to trust Mr. Lowry for the preparation of the papers and to see that everything was taken care of in proper form?" and Mr. Mackay said that he was willing to trust Mr. Lowry. Now, that was the beginning of this meeting. In the afternoon of that same day, we convened again. In the meantime, I had seen Mr. Mackay privately and I had seen Mr. Root privately and discussed certain things in regard to the necessity for certain forms to be allowed. Now, I went out of town the next day. The next day was Sunday, and I went up in the mountains. I returned in the evening of the 21st. The following day, or the 23d, we had another meeting at which Walter Root and R. T. Root and Mr. Mackay and myself were present, and at that meeting, I wrote up the minutes, prepared them there in short form, for the adoption of the resolution authorizing the mortgage, or mortgages to be issued to Mr. Mackay in any sum up to the extent of \$25,000, showing that the consideration that the company was to receive was to be the cancellation



(Testimony of F. M. Lowry.)

of the indebtedness of the company to Mr. [89] Root in an equal amount for whatever the mortgages were issued, that when they were issued the amount of their face was to be credited upon the indebtedness of the company to Mr. Root. Now, these resolutions were put into the form by me of formal minutes, as formal as we usually keep them. The resolution was adopted by a unanimous vote. The loose form of it was in typewritten form in this book, not pasted in, but to be written in afterwards. I have the original draft of the resolution itself here present, marked Plaintiff's Exhibit "W" for identification. It is the original manuscript draft of my minutes of that meeting of July, 1913, and it was the resolution that was adopted at that meeting at which Mr. Walter Root, Mr. R. T. Root and Mr. Mackay and myself were present. I was secretary and a director and vice president of the corporation, and Mr. Walter Root was a director of the corporation, and Mr. R. T. Root was president. That constituted the entire directorship of the corporation.

(Plaintiff's Exhibit "W" for identification offered in evidence.)

Mr. STONEMAN.—To that offer we enter an objection that the purported resolution and record of minutes of that alleged proceeding are invalid for any purpose in that the minutes do not show the total number of shares outstanding. They do not show what shares were present in person or what shares were represented by directors. They do not

(Testimony of F. M. Lowry.)

show that the shares of stock were noted as shares at the stockholder's meeting. On the contrary, they *purport show*, if anything, that it was a *vive voce* vote. It does not show that the meeting was held on the 19th of July, 1913, or on a holiday. On the contrary, it shows that it was some blank day in July; and for these reasons, which occur to me at the present time after a cursory inspection, we [90] enter the objection if they are offered for the purpose of showing any legal action taken by the stockholders of the Norma Mining Company in the execution of the mortgages.

The COURT.—These minutes are not signed.

Mr. LOWRY.—That is merely a manuscript, first on this page shorthand minutes, then copied in manuscript on that page. These are not the final minutes, but my draft of the minutes which were afterwards typewritten. They were drafted, as I recall, either on the 22d or 23d. I do not recall why I did not date it.

The COURT.—Yes, it shows that Root, Lowry and Root were present, and the minutes of the stockholder's meeting, if they are the minutes, show that all shares were present. "All shares being present," it says. I will overrule the objection and admit the memorandum for the present, subject to the defendant's objection.

(Plaintiff's Exhibit "W" read in evidence.)

Mr. LOWRY.—Mr. Root at that meeting said that he owned all of the shares of the corporation outside of the directors' shares, and produced certificates

(Testimony of F. M. Lowry.)

at this meeting assigned in blank.

Mr. STONEMAN.—We move that the answer be stricken out for the reason that it is not competent for the purpose of proving the ownership of the shares or the right of Mr. Root at that alleged meeting to vote the shares.

The COURT.—It might be a circumstance for the Court to consider. The objection is overruled.

Mr. STONEMAN.—Exception.

Mr. LOWRY.—The minutes of the July meeting were typewritten afterwards. The work was done in my office. I do not recall who was our stenographer. I think it was a Miss [91] Saunders. She is in Colorado. Any copies that I had were put in the minute-book in Mr. Root's office, carbon copies as well as the original. I was representing Mr. Mackay at that time and did not retain a carbon copy. I do not think it a strange proceeding for a man representing another person. I had confidence in both parties. I had confidence in Mr. Root and in Mr. Mackay and I knew the circumstances of the ownership of that stock and I did not believe there would be any trouble. I could produce a certified copy of the resolution. That was not our custom. Sometimes I wrote them in immediately and at other times I put them in a box to be filled out at another time. That was against our rules to paste anything in the minute-book. It was our custom to leave it loose, and I felt perfectly safe. I did not have the directors sign these minutes then. They couldn't at the time, they were not officially



(Testimony of F. M. Lowry.)

drawn up. I think they were signed; I am not sure. Mr. Root produced the shares at the meeting. I saw them. He had two certificates aggregating 299,997 shares and he had his own certificate of one share. These certificates of 299,997 shares, Mr. Root had at that time were the original certificates that had been issued to Mr. McDermott by me. I had signed them as secretary. They were in my handwriting. They were issued in July, 1905, July 3d. There appeared on the back an endorsement in blank, usual form, assignment signed by E. G. McDermott; no name written in the blank. I was acting for Mr. Mackay in reference to these mortgage transactions, after this meeting in July, 1913. I saw Mrs. Root July 24th, 1913, at the train starting to California. She was going to Los Angeles. Mr. Root and Mr. Mackay were with her, and I had a conversation with Mrs. Root at that time. [92]

This conversation was in reference to the \$16,000 mortgage. I do not recall the words, but the purpose of the trip to California was discussed with her, and hope expressed by her that it would be successful. The purpose was to place, was to procure money on this mortgage. I couldn't say what she said.

Mr. ALDRICH.—We object, if the Court please; leading; also for the further reason that it is immaterial and irrelevant. Our position is that no matter what the stockholders know with reference to transactions, they cannot even by their vote make an ultra vires act good. We insist that there was

(Testimony of F. M. Lowry.)

never any indebtedness to Mr. Root, never any indebtedness of any kind to Mr. Root, and in the absence of indebtedness, where there is no doubt that the corporation had no capacity even if everybody concerned in it gave their consent and voted for it. Even if he owned the shares himself.

The COURT.—Overrule the objection.

Mr. LOWRY.—I cannot attempt to repeat the conversation, but I can repeat the purport of it, that I discussed with Mrs. Root the purpose of that trip to California. They were going to California to get money to pay off those checks and to get it upon the mortgage which had been authorized and they hoped to sell it for \$25,000. I know the land or property that has been described as the Boulder Farm, in Colorado. I know the value of that farm.

Mr. STONEMAN.—If your Honor pleases, may we ask the witness if his knowledge of that farm has not been obtained under his own testimony while he was acting as attorney for Mr. Root? We submit, if your Honor pleases, that it must have been, because that transaction long antedated July 19th, 1913, and we do object and base our objection on the ruling [93] of the Court.

The COURT.—I will overrule the objection.

Mr. LOWRY.—Its maximum value is \$15.00 an acre. It is 120 acres of land that lies above the level of irrigating ditches, shallow soil, rocky, has no water-right, so situated physically that it can never procure water, nothing to pasture on. Subsequent to the execution of the mortgage, of the \$16,000

(Testimony of F. M. Lowry.)

mortgage, I had a conversation or conversations with Mr. Root in May, the 31st of May, in New York City at the Belmont Hotel. That was the first time I recall discussing this mortgage with him after the execution, in the year 1914. I was not in his employ at that time. I cannot repeat the exact words, but the matter was discussed. It is true that he paid my expenses. I went there in response to a letter from Mr. Root requesting me to come, and the purpose of the trip was that he might induce me to render him service, which I refused. That was the sole purpose, of making that trip to New York. Mr. Root said in substance that the mortgage aggregating \$21,000 to Mr. Mackay were good security, that Mr. Mackay had no occasion to worry, as they would be paid in full, that all he needed was time to turn in. The Norma Mining Company was mentioned as being the company having made the mortgages. I had frequent conversations in reference to this with him in September, 1914, at Chicago. I went to Chicago at the expense of Mr. Mackay and to represent him in trying to put through a deal with Mr. Root involving the transfer of an equity in this property either to Mr. Mackay or to a corporation which he might organize, in payment for approximately \$35,000 of claims against Mr. Root held by creditors in Denver, Colorado. I submitted to Mr. Root a statement of account between Mackay and himself and discussed [94] that so as to ascertain the amount that was due between them, because he at once disputed an item of \$3,000.



(Testimony of F. M. Lowry.)

Mackay had not made it clear to me and I went into that. Mr. Root refused the proposition which he made for the transfer of that equity. He offered a counter proposition to me along the same lines but involving the procuring of a cancellation of further indebtedness against him. He said that the mortgages were perfectly good and would be paid in full as soon as he could make a turn. That he was trying to procure a larger sum through a friend of his by the name of Huron, I believe, that he expected to procure a mortgage for \$50,000 and out of the proceeds of that, he would pay off the \$21,000 mortgage to Mackay and have something left for himself. The matter of the \$3,000 due-bill came up for discussion between him and me, because I was unable to understand Mackay's account of it, and Mr. Root himself said at that meeting that the \$3,000 represented by the due-bill was never received by him in the form of checks in the George Miller estate, and I was trying to get the matter straightened out. I could not understand from either side. He said that the mortgage was for \$16,000, that there was checks approximating \$11,000 to the George Miller estate, and that there was items of interest on the so-called Lowry loan and some other items which brought the amount that he had received at that time up to \$13,000, but that the \$3,000 he held Mackay's due-bill for against it Mackay had offset some notes of the Treasury Mining and Reduction Company endorsed by him upon which—well, he said he was personally liable.

(Testimony of F. M. Lowry.)

He did not pretend that he ever got the money from the George Miller estate. He said if there was trouble with the Miller estate, that he did not want to get in shape so that he might be accused of having received more in checks from that estate than he had received. That [95] the \$3,000 was another matter between himself and Mr. McKay and the Norma Mining Company and Mackay, that the entire \$16,000 was all right, would be paid, but that he did not want to put the \$3,000 in the same shape as the checks from the Miller estate for fear of liability to that estate, that is, liable to be brought into court for getting the funds of that property. I had frequent conversation with Mr. Walter Root, one of the directors, subsequent to the execution of this mortgage, about the \$16,000 mortgage and \$5,000 mortgage.

The COURT.—I do not know how far your general objection goes. I would like to know from counsel whether they are making any objections to this line of questions.

Mr. ALDRICH.—We are making objection to this witness testifying at all, and to everything that he says about the parties' relations.

The COURT.—I will sustain the objection.

Exception.

Mr. LOWRY.—My resignation as secretary or director of the Norma Mining Company, which I executed on the formation of the company, was never acted on by the board of directors prior to July 19th, 1913. I was never notified by any person that my

(Testimony of F. M. Lowry.)

resignation had been accepted up to this time. There were no shares in the meeting of the board of directors of the Norma Mining Company held on the 15th of July, 1911. I was never notified of any such meeting, not present at any such meeting. I did not write the minutes that appear upon this book as secretary, as of July 15th, 1911. I know how the Norma Mining Company was operated, who operated it, who paid its expenses and had the entire management and control of the corporation from 1905 to 1913. It was Mr. R. T. Root. [96]

Cross-examination.

Mr. LOWRY.—I understand shorthand; I can operate a typewriter. I have practiced doing that a good many years ago. I have occasions to do it now. In the beginning of my employment with Mr. Root, it was almost all of that. The record-book at the time of this alleged meeting of July 19th was probably at the office of Mr. Root. I do not recall taking it to my office. I would say that it was not at my office. I put the loose leaf of this typewritten copy of the minutes in that book about the 1st of September, 1913. Mr. Walter Root and Mr. Mackay were there and knew of it. It was upon the occasion of putting the seal upon this first mortgage. It was about the 1st of September, 1913. The seal of the corporation was in the office of the company, which was Mr. Root's office. I was supposed to have the custody but it was not actually in my possession. It was not in my possession after I quit Mr. Root's office. I had an office of my own.



(Testimony of F. M. Lowry.)

I was out of his employ in 1909 and opened up an office for myself in February, 1910, but continued to act for Mr. Root after that in certain things, and continued to act as director and secretary of the company.

There were no other minutes in the record and laying in the book at the time I put it in. The presumption that I have in my mind is that I made a carbon copy of this. I have searched my office very carefully for a carbon copy, anticipating there was one and it was in my possession, but have not found any. My note at the top of these minutes show that a carbon was to be made and I expected to find that carbon in my office. I prepared the minutes introduced in evidence, first in shorthand, then in manuscript, then they were copied by my stenographer, Miss Saunders. She is not now in my service and has not been for some time.

I prepared a mortgage for twelve thousand five hundred [97] dollars and submitted the form to Mr. Root. It was not executed. It was the understanding that the mortgage was authorized and they would execute it, if it was executed, out there. Mr. Root was not satisfied with the form that I had prepared. I know how much the authority was. I knew what was the expectation when they left for California, as to the amount. I prepared a form after the meeting. It was delivered to Mr. Root. That was typewritten, I think, by my son, but I drafted the mortgage. I have no copy of the mortgage. As I recall it, it was on a printed blank, the

(Testimony of F. M. Lowry.)

blank description and everything else being filled in on the typewriter. I remember insisting sometime after the Moffett trouble that my resignation should be accepted. There was no time in connection with the Moffett matter that I made that request, it was at a later date. I began to request the acceptance of my resignation from all of his companies as early as 1912. As to what time in 1912, I do not know, but not before 1912. Six months or later after Mr. Moffett's death there were questions which required very careful consideration. I was right in the midst of it with Mr. Root. It was my habit to form an independent judgment as to what ought to be done, both as to the questions of fact and of law, and that then to submit it to such counsel as Mr. Root might designate, that was my general practice. There were charges against The Norma Mining Company on account of operation.

There is no report that I ever signed that would show that The Norma Mining Company was not in debt. Any money that was expended on that property was to be repaid. It was merely entered upon the books as an account showing what expenditures had been made, between Mr. Root making the expenditures and the corporation. It was regarded at all times as an indebtedness of the corporation to him. [98]

There were books kept prior to Mr. Moffett's death. One was a small book about like that minute-book that has been introduced in evidence. It was marked on the outside, if I recall it, "Arizona

(Testimony of F. M. Lowry.)

Business." There was another book of about the same character that carried the transaction down from where the first book left them, to approximately January 1st, 1913, which, as I recall, was marked on the outside, "White Hills Business." The name of the Norma Mining Company did not then appear on the outside of the books, and I do not think it was on the inside. On January 1st, 1912, fixing that as a date where I knew the sum, The Norma Mining Company was indebted in the sum of thirty thousand, five hundred and some dollars. Now, that included interest upon the items. That is the way we figured it when it became involved or there was a possibility of becoming involved with the Moffett estate and it was necessary to figure what that indebtedness was upon this White Hills business—thirty thousand, five hundred and some odd dollars.

I was trying to sell the Boulder Farm for Mr. Root some time after I returned from California in 1910, and I think I made another trip to Boulder to look that up later on, a year or two later on. There is about three acres that comes under the ditch, but the land does not own the water-right. It cannot get water unless they pump it. It would be necessary to lift it if it were pumped from the corner possibly thirty-five feet. It is about two miles and a half, as I recall it, from Boulder. Really none of it is irrigable land. It is shallow soil and covered with boulders and rocks. It is not land that could be cultivated, except those two or three acres



(Testimony of F. M. Lowry.)

that lie where the ditch comes across. I think he paid about \$20,000 for the land, his total payments were \$27,000, that is my recollection, and at one time after he had made a partial payment, he sought my [99] advice as to whether or not he had better go on and complete the payments, and I advised him to complete the payments, but not on account of its value as agricultural land.

Redirect Examination.

Mr. LOWRY.—The reasons why this land, this Boulder farm, was purchased by Mr. Root, was they thought and hoped it was oil land. There had not been any production of oil very close to this property, not close enough to give it the value they were then demanding for it.

Those books I have testified about on cross-examination of The Norma Mining Company, I presume are in the possession of Mr. Root. I don't know.

This property described in these mortgages was generally referred to as the White Hills properties. It would be the same properties mentioned in these mortgages.

**Testimony of W. D. Griermann.**

Direct Examination.

W. D. GRIERMANN.—My name is W. D. Griermann, and I reside at Altadena, California. I have known Mr. R. T. Root about eight years, seven or eight years. I saw Mr. R. T. Root in Los Angeles, in August, 1913. On July 28, 1913, Mr. Root called me up on the telephone and asked me to come to

(Testimony of W. D. Griermann.)

Los Angeles or asked me if I was coming, and he said on that day. And he said over the telephone that he was at the Alexandria Hotel in Los Angeles, and he asked me if it would be convenient for me to see him there, that he was anxious to see me, and I said I was coming over and would see him. When I saw him he asked me if I would go to San Diego with Mr. Mackay to see a friend of mine and try to get a [100] loan from him. He said. "We will give good security, will give a mortgage on the White Hills property in Arizona, and we want a loan of \$25,000, or want \$25,000 on that property. That is worth several times that amount, or a good many times that amount." He said that in order that there might be no question in regard to the legality of the transaction, he held, he called a meeting of the board of directors and had a resolution passed authorizing such a loan, although he said it was not necessary to call a meeting because he owned all of the stock. I know Mrs. Root, the wife of R. T. Root. He said, in order to avoid, he simply repeated it in different words, in order to avoid the possibility of any technical objection on the part of the party who might want to make the loan, he had this resolution passed, although he did not consider it necessary because he owned all of the stock. I saw Mrs. Root in California at that time, that same day on July 28th, 1913. Mrs. Root said that Mr. Root owned a great deal of property which was not bringing in any money, and that he was in need of money, and that if I would assist them to get a loan

(Testimony of W. D. Griermann.)

on the White Hills property they would soon be able to pay me money that was past due. That was the substance of it.

In 1914 I saw Mrs. Root in New York City, in June and July. At that time I complained of not having received the money that was due me and I needed it very badly and expressed some fear that Mr. Root might lose some of his property, and I asked Mrs. Root if Mr. Root still owned the White Hills property, and she said, "Yes." She was not claiming to be interested herself personally in any way in the property. Nothing was said in that conversation in reference to the mortgages that have been introduced in evidence in this case.

Judge BAKER.—The plaintiff rests its case.  
[101]

Mr. STONEMAN.—We move on the ground that we have been surprised in the evidence which has been introduced and upon the showing that there has been no want of diligence in the preparation of this case on our part, for a continuance for a sufficient number of days to enable us to secure the presence here from Denver of W. W. Root, who if present as a witness, will testify there was no such meeting held in Denver on July 19th, and that the record of the meetings of the stockholders and directors, as they appear upon the minute-book introduced in evidence in this case and marked as an exhibit, is a true record of all the proceedings had at all meetings of the stockholders or directors of The Norma Mining Company.



(Testimony of W. D. Griermann.)

The COURT.—Have you, gentlemen, reached any agreement as to when the trial of the case may be resumed?

Judge BAKER.—At any date your Honor may fix after the 1st of October.

The COURT.—That is satisfactory to you?

Mr. STONEMAN.—We stipulate, if your Honor pleases, that the testimony of Mrs. Root—I was about to say that we would agree that the examination of Mrs. Root shall be confined to the question of only of the conversations alleged to have been held with her and the ownership of this stock.

The COURT.—I will permit them to take the interrogatories to confirm or deny the conversations to which the witness testified here, but I cannot permit them to take the deposition with reference to the ownership of that stock.

**Testimony of R. T. Root (Recalled).**

R. T. ROOT, recalled and testified.

On July 24, 1913, at Denver, Mr. Lowry had no conversation with Mrs. Root at which Mr. Mackay was present, to my knowledge. I was with Mrs. Root all the time on that occasion. [102] In the month of May, 1914, I had no conversation with Mr. Lowry in New York, about the execution of either of the mortgages in evidence in this litigation. In September, 1914, at Chicago, I did not have a conversation with Mr. Lowry with reference to any of the matters out of which this litigation arose. I did not have any conversation at that time with Mr. Lowry with reference to either the first or

(Testimony of R. T. Root.)

second mortgage. I did not have any conversation at that time with Mr. Lowry with reference to any purported stockholders or directors' meeting held in July, 1913. I did not have any conversation with him with reference to anything that was to be done in the future concerning any transactions between myself and Mr. Mackay.

I had a conversation with him at New York in 1914. I did have a conversation with him in September, in Chicago.

The COURT.—This case is closed except for the purpose of taking the testimony or the deposition of Miss Saunders or the stenographer whom Mr. Lowry testified did the typewriting, and the testimony of Mr. W. W. Root and the testimony of Mrs. Root, and the testimony of any other witness who was present at the alleged meeting in July, 1913. If there are any other witnesses that either party desires, whose deposition or testimony either of the parties desires, or who can give material testimony in this case, the party may make application to the Court for the purpose of enabling the Court to determine whether such further evidence may be taken.

The deposition of Mrs. Root is to be confined to testimony on her part in rebuttal to the testimony of the plaintiff as to conversations had with her about what she had said, testimony of Dr. Griermann, and Mr. Lowry. The testimony of some other persons who may have been there in the offices of Mr. Lowry and who may know something of it, I do not permit. I said any other person who was

(Testimony of R. T. Root.)

present at the meeting and that of Miss [103] Saunders. I did not understand that you ask permission to take the testimony of the office force or any other persons. I think the only thing that would interest me in that line would be the testimony of the stenographer. A general idea that some sort of minutes were written up without knowing what they were and the contents, would not go very far in enabling me to determine the issues in this case. The case may be transferred to Phoenix for further proceedings, and if testimony has all been taken and the parties will be ready, it will be heard on the 18th day of October. [104]

**Testimony of Jessie Saunders.**

Direct Examination of JESSIE SAUNDERS by  
Plaintiff.

My name is Jessie Saunders and I live in Denver, Colorado, have lived there about four years and am acquainted with Mr. F. W. Lowrie. I know Mr. Root and his son Mr. Walter Root, and know a gentleman by the name of Mr. Sykes, Mr. Elmer Sykes.

In July 1913, I was engaged as stenographer for the Carlsbad Plantation and Orchard Company and the Interstate Land and Development Company in the Colorado Building, I think the number was 416. These offices were also occupied by Mr. Lowrie and Mr. Elmer Sykes. In July, 1913, I saw Mr. R. T. Root and Mr. Walter Root and Mr. McKay in these offices. They were in there at different times in July. They had a meeting there one day in July and I saw Mr. Walter Root there and I saw Mr. Mc-



(Testimony of Jessie Saunders.)

Kay come in to attend the meeting and Mr. R. T. Root was in the next room when Mr. McKay walked in. I cannot remember the exact date in July. Mr. R. T. Root was in the next room. These companies had two rooms, Mr. McKay and Mr. Walter Root came in. Mr. Lowrie was in the office, I don't know which room he was in when they walked in, they went into the next room. Mr. Lowrie came in while they were there and handed me a paper of some kind and asked me to transcribe it. I transcribed it very quickly as he was in a hurry for it, I wrote it hurriedly and gave it to him, he met me on the way and took it.

Mr. Sykes desk was right back of mine and he was sitting there back of me. I don't remember seeing Mr. R. T. Root and Mr. Walter Root go out but I am sure they didn't stay very long after that, I think they walked right out of the place then. I have no distinct memory of what I copied or wrote, I cannot remember the wording of the paper at all. I cannot recollect the general subject. Mr. Lowrie didn't dictate it to me, he handed me a paper that he had written out himself for me to transcribe on the typewriter. I do not remember distinctly what it pertained to, I have an impression—not an impression, but I do remember indistinctly of writing a paper for Mr. [105] Lowrie, and of thinking at the time that the name of the company was a new one to me—that I didn't know the name, because I had written so many papers for other mining companies. It related to this meeting that had just been held, it did

(Testimony of Jessie Saunders.)

not relate to those other two companies, it related to this meeting whatever the meeting was. Mr. Root was interested in those other two companies.

Plaintiff's Exhibit "W" for identification, pages 150 and 151, seem familiar to me; I would swear that this is Mr. Lowrie's own writing and his own shorthand, and I remember writing on a book at some time, but it is so indistinct, this book is— I wrote it from a book or a sheet of paper, I don't know which, but he didn't dictate it to me. That writing on page 151 is in the handwriting of Mr. Lowrie. I made one carbon copy and it is marked up here, "one carbon copy."

Cross-examination by Mr. STONEMAN.

I never tried to read Mr. Lowrie's shorthand notes, I may be able to read a few words, but I never transcribe from his notes, I do not think he writes exactly the same system. I was in Mr. Lowrie's employ two years and five months before July 1913, from April 15, 1911, until October 1, 1913. My desk was in his suite of offices, I was working in Mr. Lowrie's office. Upon the occasion testified to Mr. Lowrie did not have to send out for me. I have been doing temporary work since October 1, 1913. I went around from office to office. I did all of Mr. Lowrie's work except once in a while he wrote a paper himself, but I was his stenographer, he didn't hire other stenographers. He did a great deal of dictating to me. A great deal of it was in the shape of dictating his instructions to me, he very often wrote out a paper in long hand and handed it to me to copy.

(Testimony of Jessie Saunders.)

Before Judge Baker showed me Plaintiff's Exhibit "W," directing my attention to page 141 of this exhibit, I testified that Mr. Lowrie handed me a paper, I meant that it was written on something, I [106] didn't mean that he handed me a sheet of paper, I meant that it was written out and that he handed it to me. I never saw this exhibit before that was handed me by Judge Baker, unless I wrote from it at the meeting, that is what I have been trying to recollect. I wouldn't know whether it was a sheet of paper or whether it was a book, I can't say, if I could remember I certainly would say. I remember the circumstances very distinctly of him coming out and handing this paper to me and telling me to transcribe it. I do not remember the date but it was between two or three months before I left there, I don't remember exactly. I wouldn't say it was the 19th, I wouldn't say what month it was. Well, I was not expected to remember those things and if it hadn't been for one little instance, I do not suppose that I would recollect it at all, but Mr. Lowrie was standing back of my desk and talking to Mr. Sykes, and I heard the conversation, and it was in regard to Mr. McKay letting Mr. Root have fifteen or sixteen thousand dollars on a mortgage, and it impressed me because it seemed a little strange.

I don't remember the name of the Norma Mining Company, I didn't make any attempt to remember, I wasn't expected to remember those things. Mr. Walter Root first called my attention to the fact that I may have been present at this conversation, and



(Testimony of Jessie Saunders.)

might have transcribed this record. He came up to my room at the Roseland Hotel one evening about seven or half past, and the first thing he asked me was if I remembered writing the minutes of the meeting of the Norma Mining Company, and I said, "yes, I am quite sure I did," and then I said, "Well, I have written so many papers for other companies that I do not recall their names." He mentioned these names, The Treasure (?) Reduction Company and the Clear Creek Company, and I said, "I remember those very distinctly, and since you mention them, I can say for sure about this other company," and that was about all he said. He mentioned no other names at all until I asked him. [107]

I know George S. Sanders, I met him once, he came up to the hotel two or three weeks ago, I don't remember the exact date, but it was in the evening about six o'clock. The first question he asked me was, "Did you tell anyone that you didn't write these papers"? and I said, "No, I never told anyone that." I said to Mr. Walter Root that I wasn't quite sure whether I put in typewriting any minutes of any proceedings of stockholders or directors of the Norma Mining Company, but it was asked me unexpectedly and I had no time to give it any thought, and I couldn't say at that time whether I had or not. Since that time I have talked with Mr. McKay, Mr. Sykes and Mr. Lowrie and my memory was refreshed by conversations with those gentlemen to a very great extent; I just merely recalled it myself. We talked about a paper containing the minutes of the pur-

(Testimony of Jessie Saunders.)

ported meeting of the board of directors of the Norma Mining Company, held on the 19th day of July, 1913, but I remembered it myself. The next day after this conversation with Mr. Root I had the talk about the matter with the gentlemen opposite. No, I didn't talk to any of them the next day, I was up to their office the next day, but I didn't talk it over, I don't think that Mr. Sykes was there, and I know that Mr. Lowrie wasn't. I began to wonder why Mr. Root had called the night before. He gave me the impression that he just came up to find out where—if I knew where the papers were. Mr. Lowrie did come up to my place, to my room at the Roseland Hotel one evening, I think it was about that same week. He asked me if I remembered that I had copied a paper. I told Mr. Lowrie just what I told you. That Mr. Root first asked me if I had copied the minutes of this Company, the Norma Mining Company, I think that is the exact name, I am not sure, and I said, "Yes, I am quite sure I did," and then in a minute or two, I said, "What were the names of these other companies you were interested in," and he named them, it seems to me that he named two. I said "Since you mention these, I am not quite so sure, and I won't say now that I did." [108]

I made an exact copy of what Mr. Lowrie handed me, and that was this that has been exhibited to me by Judge Baker—Plaintiff's Exhibit "W." At the time he handed this manuscript to me to copy he told me to get it out as quickly as I could and that they



(Testimony of Jessie Saunders.)

were waiting for it. He said he was in a hurry for it and to get it out as quickly as I could, that they were waiting. If he said anything else, it could not have been of much importance, and he went back into the other room, and when I took it out of the machine he came out for it. I wouldn't have made any changes if he hadn't asked me to do so. I am not sure he didn't ask me to do so, but I don't think he did, I don't remember anything about those things. I don't remember whether it was in the morning or the afternoon. I am absolutely positive that Walter Root was there and R. T. Root was there and McKay was there, and Lowrie was there. They were together in the room where they were holding the meeting. Mr. McKay came in last, I don't remember whether they shut the door. Previous to this time Mr. R. T. Root was in that office, once in a while but not as often as Mr. Walter Root. I don't remember whether they were in shortly after or not. I don't remember any other meeting that was held on another occasion than the occasion which I have testified to, at which were present R. T. Root, W. R. Root, Hugh McKay and Lowrie. I was there during the ordinary business hours. There is no reason why I should remember if another meeting had been held, I remember this one because of the fact of Mr. Lowrie standing right beside my desk, and mentioning the matter to Mr. Sykes why the meeting was being held, and I looked up about that time and saw Mr. McKay coming in. I remembered this circumstance long before I had the conversation with Mr.



(Testimony of Jessie Saunders.)

Sanders. I told Mr. Lowrie about it, I told him when he was at the Roseland Hotel. I saw Mr. Lowrie at his office several times. I often go up there whether I have any business up there or not. I have told him at different times, it may have been either at his office or when he called, I told him both times very likely. I am not able to swear positively. [109] Mr. Lowrie called upon me at my residence, once, I think. I am referring to that one time. Mr. Lowrie knew where I lived at that time. I don't think Mr. Lowrie asked me to come to his office to have a further talk with him. I am not quite sure that he didn't. I went up there involuntarily. I didn't remember any instructions, but there are instructions written on the paper and naturally I would make a carbon copy. They had not been in Mr. Lowrie's office holding this meeting to which I have testified very long before Mr. Lowrie gave me that to copy. I don't know whether it was in the morning or in the afternoon. I do not know the date. I do not know whether it was on a separate sheet of paper or that book, but it was written out in longhand for me to transcribe, I remember that distinctly. I am quite sure he did not give me any other paper with that to copy. He gave me what he had written at that time, it was written in long hand, certainly and it may also have been written in shorthand, but the longhand is what I wrote from. I do not recall whether there was any shorthand notes given to me with the longhand copy.

I have said that I have an indistinct recollection

(Testimony of Jessie Saunders.)

of him handing me a book at some time, and having me transcribe a paper from it, but I can't remember what the book was like. I do not recall what date I filled in there in that meeting where it was blank.

I was employed on a salary at that time by the Carlsbad Plantation and Orchard Company and the Interstate Land and Development Company. I made no note or charge for this extra work, it was part of my regular work. I think Mr. Lowrie was an officer in one of these companies that I speak of. I did all the work in his office that he asked me to do without any extra compensation. I considered it part of my work; I didn't make any distinction in the work that Mr. Lowrie gave me, it was all the same to me. I was not called upon to read any shorthand notes.

It was not customary for Mr. Lowrie to writ all of his work [110] that I did for him out in long-hand, and then have me copy it for him on the typewriter. This was not the only exception that I know of where he did that. I have never been told this meeting was on the 19th, July 19th, 1915, it wasn't part of my testimony I wasn't paying any attention to anybody else's testimony. I have mentioned what I remember. I have been questioned and my recollection refreshed by those who are interested in what I knew. No suggestions have been made to me as to how my testimony should be presented. I have told everybody I would tell the truth. Mr. Lowrie called at my residence for the purpose of having this conversation with me in the evening. He did not call upon me by appointment, he just went up

(Testimony of Jessie Saunders.)

taking chances of my being home that evening. He didn't telephone me he was coming. Mr. Lowrie didn't send out for me to do this work, I was right there. I do not know whether the minute-books of the company were there or not.

Redirect Examination by Mr. BAKER.

I was Mr. Walter Root that came to see me in Denver and asked me these questions, I think it was about seven or half-past seven in the evening, I do not recall the exact date he came to see me and asked me these questions. I know him to be the son of Mr. R. T. Root. He didn't say where Lowrie was and did not say anything about his father. I don't think Mr. Walter Root said anything in reference to him having been requested to see me or sent to see me about that matter.

I think this man Sanders is a policeman or a detective of the police force of Denver, I am not sure whether he was a regular policeman of the City of Denver. He is an ordinary policeman of the street; I do not know what position he holds. I do not know whether he was in private employment or public employment. He called upon me about three weeks ago, although it may not have been quite that long. I had often seen his name mentioned [111] in the papers, and then he told me he was a detective. He said that Judge Whitford had sent him up. He is sitting right across the table in the courtroom. He said he was sent up to see me by Judge Whitford the representative of this other party—I do not remember the exact words.



(Testimony of Jessie Saunders.)

Recross-examination by Mr. STONEMAN.

Mr. Sanders told me who he was and what he came up for. I told Mr. Sanders that I told Mr. Root, after he mentioned those other mining companies that I wasn't quite so sure, and I couldn't say at that time. I didn't tell him that I denied writing that, and I told Mr. Sanders that I had never told anyone that I didn't write those papers. That was the first question he asked me and I said I never told anybody that I did not write those papers. I have heard it mentioned before I came to Arizona that these minutes which I was given to copy were in a book. I did not know that they were in a book. I know that I have written some papers from a book.

By the COURT.—I wish you would repeat as nearly as you can the exact conversation which you say you heard between Mr. Sykes and Mr. Lowrie. I could not possibly repeat the exact words, I really was not paying any attention. I overheard their conversation and it impressed me because it seemed strange; the impression is that fifteen or sixteen thousand dollars was mentioned, by Mr. Lowrie to Mr. Sykes, and I construed that there was to be a meeting—I can't remember the exact words at all. Of course they were meeting there, and I looked up when they came in when I knew there was going to be a meeting there for that purpose. I cannot remember any of the conversation. I didn't make any attempt to remember it. I remember something about what took place. It was Mr. Lowrie who mentioned the sixteen thousand dollar mortgage. I do

(Testimony of Elmer Sykes.)

not remember what he said. I remember that they were to have a meeting; that was the most important [112] thing, the meeting and the amount. I remember those things but not the exact words they said. All that I remember is that there was to be a meeting and a fifteen or sixteen thousand dollar mortgage, I do not remember the amount. Mr. McKay was to let Mr. Root have the money—I didn't pay any attention to the details. I do not remember the month this conversation was had, I know it was not very long before I left there at least.

### **Testimony of Elmer Sykes.**

ELMER SYKES was called as a witness.

Direct Examination by Mr. BAKER.

My name is Elmer Sykes, I reside in Denver, Colorado, I am in the real estate business, am fifty-four years old, and have known Mr. Walter Root between four and five years. I have know Mr. R. T. Root about thirty years, possibly longer, about twenty-five or thirty years. I know Mr. F. W. Lowrie, have known him probably about forty years. I have known Mr. McKay, the plaintiff in this action, about four or five years, since I came to Denver. In July 1913, I was in business in the Colorado Building, Denver, Colorado. I was with Mr. Lowrie as secretary of the Carlsbad Plantation and Orchard Company and the Interstate Land and Development Company. At that time I occupied the same office with him. At that time I knew of the defendant in this case, the Norma Mining Company.

(Testimony of Elmer Sykes.)

In July, 1913, I will ask you if you saw Mr. Walter Root, Mr. R. T. Root and Mr. Hugh McKay in that building in the office occupied by you and Mr. Lowrie?

By Mr. STONEMAN.—We object to the question, if your Honor please, for the reason until the date is fixed the question will be immaterial.

By the COURT.—The objection is overruled.

By Mr. STONEMAN.—Exception.

Yes, sir.

Mr. F. W. Lowrie was there at the time Mr. McKay and Mr. Root came in on Saturday. Mr. Root and Mr. Lowrie were intending to [113] go fishing on that Saturday. I remember it because it was his custom quite frequently to go fishing on Saturday and Sunday. That would be the 19th day of July. He said he would not be able to get away to go on the morning train because Mr. McKay—Mr. Root had brought Mr. McKay to him for him to prepare some papers necessary for the preparation of a mortgage. I know the facts of Mr. McKay having the loan. On Saturday Mr. Lowrie took the afternoon train for Deckers which is a fishing resort and came back Monday some time. After that I saw Mr. Walter Root, Mr. R. T. Root and Mr. McKay and Mr. Lowrie there in that office. That was Tuesday, it must have been Tuesday, that is my recollection of it when they had this meeting, Tuesday the 22d. I know that Mr. McKay went away on Thursday the 24th. In the office on that occasion was Mr. R. T. Root, Mr. McKay, Mr. Lowrie, myself and Miss



(Testimony of Elmer Sykes.)

Saunders. Miss Saunders was in the same room with me. They stepped inside the other room, there were two rooms and they went into the other room through the one Miss Saunders and I were occupying. I knew they came there for the purpose of having a meeting. They were holding a meeting and Mr. Lowrie came out and handed Miss Saunders a paper to transcribe and she wrote it, and Mr. Lowrie took the original into the other room and I read the carbon copy. She did make a copy of that paper and I read it which was the custom.

Mr. BAKER.—I show you Plaintiff's Exhibit "W" for identification. I refer you to pages 151 and 150 there.

Mr. LOWRIE.—This is very familiar. This is Mr. Lowrie's hand writing. I don't know anything about this part over here. I cannot say positively whether or not that book was handed to Miss Saunders by Mr. Lowrie upon that occasion to copy from, yet I feel very sure of it.

I will ask you to read the entries there on that page Mr. Sykes. (Witness reads minutes referred to.)

Mr. LOWRIE.—Yes, sir, that is just as I knew at the time. [114] Our desks were practically together and it was always the custom, and is still that when a paper is written in the office, that I read it—read over the original or the carbon copy before filing. Of course there was no filing in this case, but that has been the custom right from the time that I came in the office. I supervised the work by the stenographer. Of course it was so understood when

(Testimony of Elmer Sykes.)

we came together, Mr. Lowrie was away from town a good deal of the time and he said he wanted me to keep track of everything. I have known Mr. Lowrie for forty years; I guess he does not remember the time that he did not know me. Miss Saunders wrote it out and Mr. Lowrie was there waiting for it, and she took the original and went into the room, and I in the meantime read the carbon copy of this purported instrument. I handed the copy to Mr. Lowrie later, it did not refer to anything in the office and I do not remember what became of it after that. Mr. Walter Root immediately left. Mr. Root did not go through the room; he went out through a side door in the hall and Mr. McKay remained and talked awhile. He subsequently left too, and I remember saying to him that I was very glad that Mr. Root had fixed this matter up for him.

This entry in Plaintiff's Exhibit "W" as shown me and which I have read is the same as the carbon copy of the instrument made by Miss Saunders, it is practically the same as I remember, of course I could not give it word for word, the substance is the same.

Cross-examination by Mr. STONEMAN.

I am familiar with this litigation in a general way. August 26, 1915, Mr. Lowrie was at Prescott in this State.

Mr. STONEMAN.—I will admit that.

Mr. BAKER.—That Mr. Root was there also on August 26th?

By Mr. STONEMAN.—Yes.

I really cannot tell when the litigation was first

(Testimony of Elmer Sykes.)

called to my notice, I knew that they were having trouble. Of course I knew [115] about this meeting and the mortgage and I knew of its preparation and I did not suppose there would be any trouble at all about it, but I do not know when it was first called to my attention; at the time that Mr. Lowrie and Mr. McKay first went away, I suppose. That had been hanging fire for some time, that trial. It must be a year, isn't it, since it first began. I am not at all interested in this litigation. I knew about the litigation before it commenced. Mr. Lowrie told me that he was to Prescott with Mr. McKay—I knew nothing about it. I did not talk the case over with him, I am sure of that. I did not know that he took this purported Minute Book along with him, I did not know anything about that; he never has talked about that.

The transcribing of the notes was made by Miss Saunders, I think, on the 22d of July, 1913, on Tuesday. It could not have been before that, because Mr. Lowrie was out of the city. I am sure it was not on July 19th, 1913. No, Mr. McKay and Mr. Root came in together at that time. I have not read the records in this case, not the whole of it; I read part of it on the train coming down, I had never seen it before and I was naturally interested in it a little. I read Mr. Root's testimony, glancing through a portion of Mr. Lowrie's I glanced through enough to get the substance of it, read enough to know what he testified to. I did not read Mr. McKay's testimony. I didn't look at that. I was not interested in the company



(Testimony of Elmer Sykes.)

in any way. This purported meeting was held in my office, the doors were open. No, sir, I didn't listen to it all. Mr. Lowrie told me what the purpose of it was, he told me Saturday that they were going to have a meeting later; that Mr. Root had brought Mr. McKay to him and Mr. Lowrie told me that Mr. Root told him to prepare the papers necessary to have this mortgage issued, and Mr. Lowrie said that he told Mr. Root that he proposed to draw it in the right form, and he proposed to have a meeting of the directors and stockholders, that they were coming in, and that they were going to have a meeting when [116] he returned from Deckers. And then they came in Tuesday right after lunch, I think, and had the meeting. During the conversation Miss Saunders was not present, I imagine she had gone home, she did not hear that then. That was on Saturday that he told me that; they had their meeting on Tuesday, if I am not mistaken, either Tuesday or Wednesday.

Mr. Lowrie just stated that I knew the circumstances of Mr. McKay having loaned these trust funds just for accommodation for a short time; that he was going to put it back and could not do it, and that he wanted some security, the heirs were pressing him, and Mr. Root agreed to have this mortgage executed against the property, and of course, that was the purpose of this meeting.

I talked to Mr. McKay and I knew the circumstances with reference to the loan but I did not know the details, of course I knew about the loan from Mr.

(Testimony of Elmer Sykes.)

McKay and Mr. Lowrie also. Mr. Lowrie and I had not preliminarily discussed the purpose of the meeting, he told me they were going to have a meeting. That is the only conversation that I and Mr. Lowrie ever had about this meeting. He told me they were going to have a meeting Tuesday on his return, and I knew when he came in what the purpose of the meeting was for, for he had spoken to me about it. I think that he told me again and said that they had made their plans to have a meeting. Two meetings are all that I recollect, the first one on Saturday, the next one must have been on Tuesday. Miss Saunders was not in the room both times, the first time was on Saturday, Mr. Lowrie was waiting for these others to come in, and while he was waiting he spoke to me about it. When I had this conversation with Mr. Lowrie about what this transaction was at that meeting and at which I said Miss Saunders was present, these gentlemen went into the other room and held a meeting and after this meeting was held Mr. Lowrie came out and gave Miss Saunders a paper to copy. I have not testified to-day that they did not hold a meeting until three days afterwards. I don't know when I [117] first saw that book referring to Plaintiff's Exhibit "W." At the time she prepared the papers, the minutes, my recollection is that he brought that out from the other room and asked Miss Saunders to transcribe that at once. That would be the same day (before the meeting) that I had the conversation with Lowrie regarding



(Testimony of Elmer Sykes.)

what was to be done at the meeting which Miss Saunders was present.

Mr. Root brought Mr. McKay in on Saturday and they did not have a meeting at that time but Mr. Root told Mr. McKay what to do and Mr. Lowrie went away on a fishing trip, and when he came back then they had the meeting. I talked with Mr. Lowrie about what was to be done while we were waiting for them to come in in the morning on Tuesday. I was not asked to come out as a witness on the trial of the case last August. I did not tell Mr. Lowrie what I would testify to as a witness. Prior to last August, 1915, I did not have a conversation with Mr. Lowrie as to the conduct of the trial of this suit. He did not tell me that he was going to have to prove that a meeting of the stockholders was held sometime in July, not that I recall. I volunteered to testify in this case. I knew the facts and I thought it was my duty; I told Mr. McKay so. I had no talk with Miss Saunders about what I was going to testify to. In a general way we talked about it, and I really never went into details about it until since we came over here. I came to Phoenix with Mr. McKay, Mr. Robinson and Miss Saunders. The only thing that was mentioned about the case was that I noticed Mr. Robinson looking through his papers, and I asked him at dinner, I think it was one day he was looking through some memorandum and I asked him "Are you refreshing your knowledge" and he said, "Yes, I am," and I said, "I would like to know what it is," and he said, "I will see that you have a chance to."



(Testimony of Elmer Sykes.)

And just the day before yesterday he handed me a paper and said "You can look at this if you wish" which I did. I only looked then at Mr. Lowrie's testimony and I said to him that I know the facts. This book is exactly as I knew it in July, 1913, the substance is the [118] same as far as I can remember. I cannot remember every word of the paper. The date of that meeting was not filled in as I know of. I read the carbon. It read the blank day of July, that is my recollection. I didn't think that I testified that I was sure that date of July was left blank in that carbon copy. I do not think that I did; possibly I did. I did not know the details. I did not listen. I knew the purpose of the meeting, then this paper was prepared and I read the carbon copy and I saw them retire. I was not interested but it was always the rule and it is still the rule that any paper prepared in the office I scrutinize it. I didn't file it, I handed it back to Mr. Lowrie. I did not know what Mr. Lowrie did with it, he never told me. During the time that Miss Saunders was writing the copy which she testifies was handed to her by Mr. Lowrie, Mr. Lowrie was in the other room and he got impatient and came out and stood there with us, or rather stood beside her waiting for it.

By Mr. STONEMAN.—You said in answer to a question asked you by Judge Baker that that book referring to Plaintiff's Exhibit "W," was very familiar.

By *LOWRIE*.—But I can't say certainly it was handed to Miss Saunders. She was writing and I

(Testimony of Elmer Sykes.)

am pretty sure she was transcribing from this, yet as I said before I would not swear to it, and yet the book is familiar and I know his handwriting. I must have seen it before or it would not have been familiar to me. The book is familiar and of course the handwriting I know as well as I know my own. The book has not been knocking around the office, I think it is familiar because I probably saw it at that time. This is the extent of my familiarity with it. I just saw it once and yet it is very familiar to me. I didn't know what Miss Saunders had written until I read the carbon copy. Miss Saunders did not hand the copy to Mr. Lowrie, I rather think that I took it. I don't know why I should be interested in that, I was only interested in knowing what she was writing, as the custom was always the same, to see that there [119] was no errors. In this case I read it as a matter of form, as our custom was. Then I dismissed it from my mind. I turned it over to Mr. Lowrie. I do not remember any definite conversation about it subsequent to August of 1915. In a way I was interested but only to the extent that I knew the circumstances, and I was glad that Mr. Root was making it possible for Mr. McKay to have this security. I was not supervising this matter, I was merely watching it. I was glad to know they were fixing the matter up. My interest didn't cease then. I do not know where Lowrie got that book. It is familiar, I have seen it; or rather that I have seen a book like that, and I know his handwriting. I do not think there was another book in the office

(Testimony of Elmer Sykes.)

just like that, there was one similar, but not just like that. I do not know what the book had been used for before it was used by Mr. Lowrie to make that notation in. It is the only book of its size that I recall. I do not know what was in here between pages 30 and 79, it is not one of the books I know about but I am familiar with it, I mean to say that I am not familiar with it in that I have made entries in it. It is familiar as to size and the *buildings* and the book itself. I think Mr. Lowrie kept that on his desk, on his private desk. I do not know anything about where he kept it but I have seen it on his desk a number of times, and that is why I am familiar with it. I don't recall that I saw him make any entries in there. I do not know what was contained in this book which appears to have been cut out of it which was on pages from 1 to 16 inclusive. For all I know that book might have belonged to Mr. Root or someone else, but Mr. Lowrie had Mr. Root's papers in there and I saw them on his desk. I just noticed that he had papers there with reference to the Clear Creek Power Company. I had conversations with Miss Saunders about this case, several times lately, two or three times since last August, what she remembered about it, and then she told me about Walter Root coming to see her, and also told her about this detective Saunders telling ——, [120] to attack the validity of this meeting or alleged meeting and the proceedings there had, and the defendant must have known that if Mrs. Root was not present there as a stockholder, and that would have been



(Testimony of Elmer Sykes.)

very material evidence, and they could have proved that by having her deposition taken.

By Mr. STONEMAN.—I make an exception to the striking out of these interrogatories. We rest.  
[121]

The first conversation I had with Miss Saunders as far as I can recall now was when she told about Walter Root coming to see her. That was when Mr. Lowrie was away, it must have been in the latter part of August.

Mr. Lowrie asked me what I remembered about this case. I think it was after I talked with Miss Saunders. Mr. Lowrie told me a little about the testimony and I said, "Well, I remember those facts." I said that I remembered so and so, and that was all. I never saw the minutes on page 151 of Plaintiff's Exhibit "W," nothing more than if I did see it I saw it at the time that she transcribed it. I have not said or intended to say that she did transcribe from that, although I think she did, and of course my knowledge comes from the carbon copy which I read. The substance of that was just as I remember it from reading the carbon copy. If I had seen it before, it was at the time she transcribed it, which I think she did. In referring to the entry on page 151 of exhibit "W" when I said I knew it at the time—I was referring to this entry made in Mr. Lowrie's handwriting. What I intended to convey that the substance of those minutes were just as I remember it from the carbon copy. I saw what she was transcribing, if I saw the book at that time.

(Testimony of Elmer Sykes.)

By the COURT.—I think you said a while ago that you did not read anything in the book if that is the book that you saw.

Mr. LOWRIE.—Well, I meant by that—well, the desks are right close and she was at the typewriter transcribing that paper, and I meant that the contents of that, the minutes there were practically the same as I remember them from the carbon copy which was prepared. I have no distinct recollection of whether it was book or a paper. I saw the writing, yes, whether it was a book or a paper. I have not seen the carbon copy which I say I handed to Mr. Lowrie since the time I handed it to him, nor the original, nor this book. I have had no opportunity since July, 1913, to refresh myself as to the contents of this record of a meeting. Mr. Robinson gave [122] me a copy and asked me if I recalled it, and I told him I knew the circumstances of the meeting, and he asked me if I remembered it. I had to look at everything Miss Saunders did at that time. She was not doing public work in my office at that time, she was working for our corporations and was not working for Mr. Lowrie individually, nor was she working for me individually. When I went into the office Mr. Lowrie asked me to look over every paper and everything before filing it and after it came from the machine. He was busy a good deal of the time on outside matters, and I would look over things, and if there was anything in the letters, or any thing that I thought wrong, I would call his attention to it. I saw all the copies of Mr. Lowrie's



(Testimony of Elmer Sykes.)

correspondence. It was my agreement with Mr. Lowrie to read everything that came from the stenographer. This copy that Miss Saunders made had no concern with any business with which I was directly interested, and therefore I didn't file it, because that was understood as I told you before; to see if there were any typographical errors. That was part of duty, to correct the copy of Miss Saunders, and he told me he wanted me to keep track of everything in the office, so that in his absence or death I would know the full circumstances. I did not compare this work.

I had no conversation with Miss Saunders as to What Mr. Lowrie's instructions were with regard to that piece of work. I knew beforehand what the meeting was for. Mr. Lowrie told me, he told me on Saturday that there was going to be a meeting for that purpose and they had it Tuesday. He didn't go into details any more than to say what the meeting was for and I know.

I glanced over Mr. Lowrie's testimony. I didn't read it carefully. The only information I have of what Mr. Lowrie testified to is the information I gained from glancing over the transcript. Mr. Lowrie never told me what he testified to, and nobody else ever told me what Mr. Lowrie testified to. Neither his counsel nor Mr. [123] McKay. I read this on the train and that is the only time.

I said that upon Mr. Lowrie's return in August from Prescott he told me that the case hinged upon the matter of the meeting, and I said, "I remember



(Testimony of Elmer Sykes.)

about that—I remember the whole thing,” and so we never have gone into the details of it. Mr. Lowrie didn’t tell me at that time that the record of what he testified to was contained in this book marked Plaintiff’s Exhibit “W,” I don’t recall that he did. As I said, we did not go into details. I have no recollection about this book.

Redirect Examination by Mr. BAKER.

Mr. SYKES.—In any conversation that I might have had with Mr. Lowrie, or Miss Saunders, or anyone else concerning this case or any facts that is connected with this case, or anything about this meeting that I have testified to on July 1913, no one has suggested to me or prompted me in any way as to any facts that I should remember to testify to. I was one of the directors of one of these companies which were conducting business in the office occupied by me and Mr. Lowrie. The Clear Creek Power Company in the year 1913.

**Testimony of Walter W. Root.**

WALTER W. ROOT, was called.

Direct Examination by Mr. STONEMAN.

My name is Walter W. Root, I am a son of R. T. Root and a brother of Herbert Root. I reside in Denver, Colorado, and have resided there for more than twenty years. I was a continuous resident of the city of Denver during the years 1912, '13, '14 and '15, with the exception that I have been out of town part of the time at times.

I knew a young lady named Miss Jessie Saunders,

(Testimony of Walter W. Root.)

I saw Miss Saunders in Denver on the 26th day of August, 1915, at her hotel, at the Roseland, in the evening. I had a telegram from my father asking me to see her and ask her a certain question. I asked her upon entering the room if she had transcribed the minutes of the reputed minutes of the Norma Mining Company—those are not the exact [124] words, but they are nearly the words. I tried to say the words—to state the words in the telegram used by my father, whether she had transcribed by typewriter the reputed meeting, and she replied that she didn't even know the name of the Norma Mining Company. And I asked her if she knew the Treasurer Mining Company, and she said, "Yes," and I said, "You know the Glendale Company, the Glendale Mining Company," and she said, "Yes," "and the Clear Creek Power Company" and she said, "Yes." I said, "You have written a good many papers of those companies, because those companies I had organized during the year 1913."

I said, "You have written me certain papers," and I said, "And you have written minutes about the Treasure Power Company," and she said, "No, Sir," and I said, "Minutes of the Clear Creek Power Company," and she said, "Yes, sir," and I said, "And the Norma Mining Company," and she said, "No, I do not know that name," and we had about a four-minute conversation and it was all about like that. I just kept asking her one question after another, I asked her if she had written any annual reports, that was one of the questions that I asked

(Testimony of Walter W. Root.)

her, and I asked her how many hours work she had done for these different companies, and she said about a hundred, for the two new companies.

The COURT.—*By* you are positive that she said that she did not even remember the names, the name of the Norma Mining Company, are you positive of that?

WALTER W. ROOT.—I am very positive because I asked her that question; I would always come back to that question and she said, "I do not even know the name of that company."

I knew her in a very friendly way. I know the detective Sanders of Denver; I thought it was George F. Sanders, but I may be in error, but the big man Sanders in Denver, the detective, I know him. [125]

I had instructions from father to employ Mr. Sanders there, through Judge Whitford. I did employ Mr. Sanders. He is acting desk sergeant in Denver of the detectives, he is the assistant chief of detectives in Denver. He is not right here; he was to have been here this morning. There is a flood near Ashfork, and his train is held up.

I know F. W. Lowrie of Denver very well. In the month of July, 1913, the offices of Mr. Lowrie were in Denver in the Colorado Building in Denver. The offices of the Norma Mining Company at that time were in the Cooper Building, in my father's office. I was an officer of the Norma Mining Company in July, 1913. In the month of July, 1913, I was a stockholder of the Norma Mining Company.



(Testimony of Walter W. Root.)

I was not present as a stockholder or director of the Norma Mining Company at any meeting of stockholders or the board of directors of that company held in the office of Mr. Lowrie of Denver on the 19th day of July, or on the 22d or the 23d day of July, 1913.

(Witness reads Plaintiff's Exhibit "W"—Entry page 151.)

That page, in so far as it purports to show that I was present as a director of the Norma Mining Company at a meeting of its board of directors in the month of July, 1913, does not speak the truth. I was not present at any meeting of directors or stockholders of the Norma Mining Company at any date during the month of July, 1913. The minute-books of the Norma Mining Company were kept during the months of July, August and September, 1913, in a closet in my father's house, in his bedroom. They were kept in the office of Mr. Root but moved them from the office to the house there in the last part of 1912 or the early part of 1913. I took the books home in the early part of 1912 or the latter part of 1911 because we were moving our offices—

By Mr. STONEMAN.—Now, then, if your Honor please, at this time we move that the testimony of the witness, Elmer Sykes, be stricken from the record as not properly admitted under the limitation placed [126] upon the testimony made by the order of the Court at Prescott in August.

By the COURT.—The motion is denied.

By Mr. STONEMAN.—Excepted.

(Testimony of Walter W. Root.)

Cross-examination.

By Mr. BAKER.—Mr. Walter Root, are you the person or party who signed one of these mortgages in suit as the secretary of the Norma Mining Company?

By Mr. STONEMAN.—Object to the question as not coming within the limitations placed upon the testimony of witnesses to be taken at this time.

By the COURT.—I change my ruling. I overrule the objection and allow you to show if you can that this witness signed the mortgage in question.

(Plaintiff's Exhibit "E.")

By Mr. ROOT.—Yes that is my signature.

The telegram from my father might have been dated Prescott or Ashfork, but I had a telegram from him on the 26th, and I have forgotten which place it was from, either Prescott or Ashfork. My understanding was that he was leaving Prescott, had either left Prescott or was leaving when he sent the telegram. I think the original is in Denver. I have not got it here. I didn't bring it because I knew that Mr. Stoneman would have copies in some way or another, and in pursuance to that telegram I went to see Miss Saunders. I employed this detective Sanders under the instructions of my father. I was acting on instructions from father when I went to see Miss Saunders. I had a telegram instructing me to do a certain thing, and I did it. It was just to find out one thing, whether she wrote those meetings or not. I do not know what you are laying for, but I know what I went there for was

(Testimony of Walter W. Root.)

to get father's question answered. At that time I had no information at all, and had no idea of being a witness. My intention was to get the information for father. I [127] hadn't the remotest idea of anything excepting to get the information for my father. It hadn't even crossed my mind to be a witness. I read her this question that father had telegraphed me to ask her: "Did you transcribe by typewriter the minutes of this reputed meeting of the Norma Mining Company on July 19th, 1913"? She said she didn't even know the name of the company. I wanted to find out what she did know. I asked her about all those other things. My first question did not give me all I wanted to know. It is not ordinary for me to interrogate witnesses. The telegram from my father did not tell me to ask her any question about any other company. It would be the ordinary thing to do in a case of that kind. I was not present at a meeting of the directors of the Norma Mining Company in an office occupied by Mr. Sykes and Mr. Lowrie in the Colorado Building in Denver, in July, 1913. I wouldn't state that I was not in that building at all in the month of July, 1913, in the office in that building occupied by Lowrie and Sykes. I will state I didn't attend any stockholder's meeting in the month of July. I haven't the remotest idea whether I was in that building during the month of July, 1913, or not.

Redirect Examination by Mr. STONEMAN.

I was not in Mr. Lowrie's office on business connected with the Norma Mining Company in any



(Testimony of Walter W. Root.)

shape, form or manner during the month of July, 1913.

By the COURT.—Give me that other mortgage, Mr. Clark, please. I find here Mr. Root, a mortgage which has been shown to you dated the 31st day of March, 1914, signed by the Norma Mining Company by R. T. Root, President, and attested by W. W. Root, as secretary in which the following statement appears: “The execution of this mortgage was duly authorized by a meeting of the stockholders of the said mining company at which meeting all the shares issued and outstanding were present or represented, and voted in favor of a resolution authorizing [128] the execution and delivery hereof and was also authorized by resolution of its board of directors by a unanimous vote at a meeting at which all the directors were present.” Did you read that when you signed it?

A. I expect I did; I haven't read it to-day.

Q. Did you read it at the time that you put your name and the seal of the company upon it?

A. I think I did that in New York.

Q. Well, why did you execute this mortgage as secretary of the company with that recital in it if it wasn't true?

A. Well, Mr. McKay was in New York with us and we were making arrangements to go on to New Mexico on account of sole sales of property, and this paper was given to me in New York. Well, he left New York and I left a day or so following and he was to pay certain monies, which he never did

(Deposition of Mrs. Root.)

do; he did pay some of the monies but not in—

Then is this statement here true or not—

A. We had our corporation work usually in the hands of and under the advice of an attorney, and lots of papers are signed before they are ever considered or looked at whatsoever. We have papers now that are the same as that paper there—I don't mean that identical paper, but I mean other papers of other business.

Q. Then no meeting was ever held as recited in here?

A. There was no meeting held for the last two or three years.

Q. No. corporate action taken at all?

A. No, sir, that property was an idle property.

Q. It makes no difference whether it was idle or active. Let me see that other mortgage, please. You didn't execute the first mortgage, did you?

A. I did not.

By the COURT.—That is all.

**Deposition of Mrs. Root.**

Deposition of Mrs. ROOT. [129]

The WITNESS.—Mrs. A. S. Root, testifies as follows: I am the wife of Mr. R. T. Root. I did not have any conversation with S. W. Lowrie at the railroad station in Denver as I and my husband were leaving for Los Angeles on or about June 24, 1913. I did not state on that occasion to Mr. Lowrie in substance that I knew the purpose of the visit to California was to negotiate the sale of a \$16,000 mortgage on the Norma Mining Company's prop-

(Deposition of Mrs. Root.)

erty, and that I hoped it would be successful. I did not tell Mr. Lowrie on that occasion or on any other occasion that my husband and myself were going to California to get money to pay off the checks held by McKay and expected to get it by mortgage of the Norma properties which had been authorized and hoped to sell for \$25,000 or words to that effect.

The 5th interrogatory was then read which is as follows:

Q. State whether you ever had any knowledge or information of the execution of either or any mortgage of the Norma Mining Company property.

A. No, I did not.

Mr. BAKER.—We object to interrogatory 5, as not within the rule, for the admission of testimony at this time.

The COURT.—Now, counsel for the plaintiff, as shown on page ten of this transcript, said: “That it may be clear, I would like to suggest to your Honor that the statement of Mrs. Root, be confined on her part to rebuttal to plaintiff’s testimony as to conversations had with her about what she had said, the testimony of Dr. Coleman and Mr. Lowry.” That seems to be mixed up and confused. I do not think that the reporter got all that was said at that time.

By Mr. BAKER.—You will find a further statement made by the Court there that the testimony should be confined to the meeting, and to the conversation that was testified to that Mrs. [130] Root had had there with Dr. Coleman or Mr. Lowrie.



(Deposition of Mrs. Root.)

The COURT.—Well, now, that does not call for conversation with either of the three persons mentioned in this ruling of the Court. It seems to me that that is a matter which should have been brought out at the other hearing. Under the ruling of the Court, I will have to sustain that objection because it was distinctly understood that such testimony should be confined to conversations with Mr. Lowrie and Dr. Coleman or either of them, and I permitted that because counsel stated, and I thought there was some force in the statement, that they were surprised at the testimony given. Now as to whether or not Mrs. Root was present at the meeting or had any knowledge of it, that they might have been anticipated, and they could have taken her deposition and introduced it at the original hearing, and failing to do so—

By Mr. STONEMAN.—If your Honor please, before you make a final ruling. There is another phase of the question; it touches upon the authenticity of that meeting. The testimony is that Mr. Root was there with the certificates of shares in his hand.

By the COURT.—Well, there is no one that ever has claimed that Mrs. Root was present.

By Mr. STONEMAN.—No, that is quite true. Upon the first statement, I agree with your Honor that it is not strictly within the rule because it does not touch the conversation, but it does effect the meeting.

(Deposition of Mrs. Root.)

By the COURT.—Pass that question. I reserve my ruling for the moment.

Interrogatory No. 6.

Please state what interest, if any, you had in the Norma Mining Company?

A. I have all the interest except three shares.

Q. 7. State whether you saw Mr. Geierman in Los Angeles on or about July 28, 1913.

A. Yes, sir, I did.

Q. 8. State whether on that occasion or at any other time in Los [131] Angeles you said to Dr. Geierman that Mr. Root owned a great deal of property which was not bringing in any money and that he was in need of money and if he would assist him to get a loan on the White Hills property Mr. Root would soon be able to pay him, Dr. Geierman, money that was past due. A. No, I did not.

Q. 9. Was there ever any such conversation between you and the Doctor? A. No.

Q. 10. State whether or not you saw Dr. Geierman in New York in June or July, 1914?

A. I did.

Q. 11. Did he on that occasion ask you if Mr. Root still owned the White Hills property?

A. No.

Q. 12. And did you answer the question, yes?

A. No.

Q. 13. Was the company indebted to your husband Mr. R. T. Root in any amount? A. No.

Mr. BAKER.—We object to the 13th interrog-

(Testimony of R. T. Root.)

atory, that it is not within the rule prescribed by the Court.

The COURT.—Read the next one.

Q. 14. Did you have any conversation with Hugh McKay about a mortgage of the Norma Mining Company or the White Hills property in Los Angeles in June, 1913, and if so, what was said?

A. No, I did not.

Q. 15. Did you say to him at the Alexandria Hotel or at any other time or place that you thought the mortgage should be made for \$25,000? A. No.

Q. 16. And did you in that connection give as a reason that you wanted Mr. Root to have what money he needed in his business or words to that effect? A. No.

The COURT.—I sustain objection to Interrogatory Nos. 5, 6 and 13, as not being within the rule.

I do that because of the fact that the pleadings in the case show that the defendant had determined [132] to attack the validity of this meeting or alleged meeting and the proceedings there had, and the defendant must have known that testimony showing Mrs. Root was not present there as a stockholder would have been very material evidence, and they could have proved that by having her deposition taken.

By Mr. STONEMAN.—I make an exception to the striking out of these interrogatories. We rest.



The foregoing Statement of the evidence herein, (pages 1 to 109 inclusive), approved October 30th, 1916.

WM. H. SAWTELLE,

Judge.

[Endorsements]: In the District Court of the United States, in and for the District of Arizona. Hugh Mackay, Plaintiff, vs. The Norma Mining Company, Defendant. E-6 Prescott, E-33 Phoenix. Statement of the Evidence. Filed Nov. 1, 1916, at — M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [133]

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*In the United States District Court for the District  
of Arizona.*

No. 33.—(PHX.)

HUGH MACKAY,

Complainant,

vs.

NORMA MINING COMPANY,

Defendant.

The deposition of Mrs. A. F. Root, of the County of Cook and State of Illinois, a witness of lawful age, produced, sworn and examined under oath, on the 3d day of November, in the year of our Lord one thousand nine hundred and fifteen at the office of Richard H. Wyman, in the City of Chicago, in the County of Cook and State aforesaid, by me, Richard H. Wyman, a commissioner duly appointed by commission issued out of the clerk's office of the United

States District Court, for the District of Arizona, bearing teste in the name of George M. Lewis, Clerk of the said court, by R. E. L. Webb, Deputy, with the seal of said court affixed thereto and to me directed as such commissioner, for the examination of the said A. F. Root, a witness in a certain suit and matter in controversy now pending and undetermined in the said United States District Court for the District of Arizona, wherein Hugh Mackay is plaintiff and Norma Mining Company is defendant, in behalf of the said defendant on the interrogatories of the defendant which were attached to, or enclosed with, the said commission, and upon none others.

The said A. F. Root, being first duly sworn, by me, as a witness to the said cause, previous to the commencement of her examination, to testify the truth, as well on the part of the plaintiff, as the defendant, in relation to the matters [134] in controversy between the said plaintiff and defendant, so far as she should be interrogated, testified and deposed as follows:

Int. 1. Are you Mrs. A. F. Root, the wife of R. T. Root?      A. Yes.

Int. 2. State whether you had any conversation with F. W. Lowery at the railroad station in Denver as you and your husband were leaving for Los Angeles, on or about June 24th, 1913, and if so, what was said?      A. I did not.

Int. 3. State whether or not you said on that occasion to Mr. Lowery in substance that you knew the purpose of the journey to California was to negotiate a sale of the \$16,000 mortgage on the Norma

Mining Company properties and that you hoped that it would be successful. A. I did not.

Int. 4. State whether you told Mr. Lowery on that occasion, or on any other occasion, that you and your husband were going to California to get money to pay off the checks held by Mackay and expected to get it upon a mortgage of the Norma properties which had been authorized and which you hoped to sell for \$25,000, or to that effect.

A. I did not.

Int. 5. State whether you ever had any knowledge or information of the execution of either or any mortgage of the Norma Mining Company properties.

A. No, I did not.

Int. 6. Please state what interest, if any, you had in the Norma Mining Company.

A. I have all the interest, except three shares.  
[135]

Int. 7. State whether you saw Dr. Geierman in Los Angeles on or about July 28th, 1913.

A. I did.

Int. 8. State whether on that occasion, or any other time in Los Angeles, you said to Dr. Geierman that Mr. Root owned a great deal of property which was not bringing in any money and he was in need of money, and if he would assist to get a loan on the White Hills property Mr. Root would soon be able to pay him. Dr. Geierman's, money that was past due. A. No, I did not.

Int. 9. Was there ever any such conversation between you and the doctor? A. No.

Int. 10. State whether you saw Dr. Geierman in



New York in June or July, 1914.      A. I did.

Int. 11. Did he on that occasion ask you if Mr. Root still owned the White Hills property?

A. No.

Int. 12. And did you answer the question yes.

A. No.

Int. 13. Was the company indebted to your husband, Mr. R. T. Root, in any amount?      A. No.

Int. 14. Did you have any conversation with Hugh Mackay about a mortgage on the Norma Mining Company or White Hills properties in Los Angeles in June 1913, and if so, what was said?

A. No, I did not. [136]

Int. 15. Did you say to him at the Alexandria Hotel, or any other time or place, that you thought the mortgage should be made for \$25,000?      A. No.

Int. 16. And did you in that connection give as a reason that you wanted Mr. Root to have what money he needed in his business or to that effect?

A. No.

A. F. ROOT. [137]

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*In the District Court of the United States, Northern  
District of Illinois, Eastern Division.*

No. 33.—(PHX.)

HUGH MACKAY,

Complainant,

vs.

NORMA MINING COMPANY,

Defendant.

State of Illinois,  
County of Cook,—ss.

I, hereby certify that on the 3d day of November, A. D. 1915, before me, Richard H. Wyman, a notary public in and for the County of Cook and State of Illinois, at my office Suite No. 1301, No. 155 North Clark Street, in the City of Chicago, County of Cook and State of Illinois, personally appeared, pursuant to the notice thereto annexed, at the hour of 10 o'clock A. M., the witness named in said notice, and the said Mrs. A. F. Root being by me first duly cautioned and sworn, to testify the whole truth, and being carefully examined, deposed and said, as appears by the deposition hereto annexed.

And I further certify that the said deposition was then and there reduced to typewriting under my personal supervision and was, after it had been reduced to typewriting subscribed by the witness and the same has been retained by me for the purpose of sealing up and directing the same to the Clerk, as required by law.

And I further certify that the reason why the said deposition was taken was that the said witness resides at [138] Chicago, more than one hundred miles from Phoenix, Arizona, the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

And I further certify that the fee for taking said

deposition, \$5.00, has been paid to me by the defendant and the same is just and reasonable.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at the City of Chicago, in the County of Cook and State of Illinois, this 3d day of November, A. D. 1915.

[Seal]

RICHARD H. WYMAN,  
Notary Public.

My commission expires October 30th, 1916.

RICHARD H. WYMAN,  
Notary Public. [139]

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*In the United States District Court for the District  
of Arizona.*

No. 33.—(PHX.)

HUGH MACKAY,

Complainant,

vs.

THE NORMA MINING COMPANY,

Defendant.

United States of America,  
District of Arizona,—ss.

**Commission to Take Deposition.**

The President of the United States of America, to  
Richard H. Wyman, a Notary Public, in and for  
the County of Cook, State of Illinois, Chicago,  
Illinois, Greeting:

KNOW YE that you are hereby appointed a commissioner with full power and authority to examine, under oath, A. F. Root, upon the direct interrog-



atories hereto attached, at your office, No. 155 North Clark Street, in the City of Chicago, State of Illinois, on the third day of November, 1915, commencing at the hour of 10 o'clock A. M. and continuing thereafter from time to time until completed, as witness for the defendant in a certain cause now pending in the United States District Court for the District of Arizona, wherein Hugh Mackay is plaintiff and the Norma Mining Company is defendant; such deposition to be taken upon said interrogatories hereto attached and to reduce to writing the answers of said witness given in response to said interrogatories and return said interrogatories and answers thereto in manner and form as provided by law for the return of depositions.

WITNESS the Honorable WILLIAM H. SAWTELLE, Judge of the United States District Court for the District of Arizona, and the seal of said court affixed hereto at Phoenix, Arizona, this 29th day of October, 1915.

[Seal]

GEORGE W. LEWIS,  
Clerk.

By R. E. L. Webb,  
Deputy. [140]

MACKAY,

vs.

NORMA MINING COMPANY.

(1) Are you Mrs. A. F. Root, the wife of Mr. R. T. Root?

(2) State whether you had any conversation with F. W. Lowery at the railroad station in Denver

as you and your husband were leaving for Los Angeles, on or about June 24th, 1913, and if so what was said?

(3) State whether or not you said on that occasion to Mr. Lowery in substance that you knew the purpose of the journey to California was to negotiate a sale of the \$16,000 mortgage on the Norma Mining Company properties and that you hoped that it would be successful.

(4) State whether you told Mr. Lowery on that occasion, or on any other occasion, that you and your husband were going to California to get money to pay off the checks held by Mackay and expected to get it upon a mortgage of the Norma properties which had been authorized and which you hoped to sell for \$25,000, or to that effect.

(5) State whether you ever had any knowledge or information of the execution of either or any mortgage of the Norma Mining Company properties.

(6) Please state what interest, if any, you had in the Norma Mining Company.

(7) State whether you saw Dr. Geierman in Los Angeles on or about July 28th, 1913.

(8) State whether on that occasion, or any other time in Los Angeles, you said to Dr. Geierman that Mr. Root owned a great deal of property which was not bringing in any money and he was in need of money and if he would assist to get a loan on the White Hills property Mr. Root would soon be able to pay him, Dr. Geierman's, money that was past due.

(9) Was there ever any such conversation between you and the doctor?

(10) State whether you saw Dr. Geierman in New York in June or July, 1914. [141]

(11) Did he on that occasion ask you if Mr. Root still owned the White Hills property?

(12) And did you answer the question "Yes"?

(13) Was the company indebted to your husband, Mr. R. T. Root, in any amount?

(14) Did you have any conversation with Hugh Mackay about a mortgage on the Norma Mining Company or White Hills properties in Los Angeles in June 1913, and if so what was said?

(15) Did you say to him at the Alexandria Hotel, or any other time or place, that you thought the mortgage should be made for \$25,000?

(16) And did you in that connection give as a reason that you wanted Mr. Root to have what money he needed in his business or to that effect? [142]

(Endorsements on Back of Cover of Deposition:)

No. —. In the United States District Court, for the District of Arizona. Hugh Mackay, Complainant, vs. Norma Mining Company, Defendant. Commission to Take Deposition. [143]

(Address and endorsements on envelope containing the foregoing deposition:)

GEORGE W. LEWIS, ESQ.

Clerk, U. S. District Court,

Phoenix, Arizona.

After five days return to RICHARD H. WYMAN,  
1301-4 Ashland Block, Chicago.



(Endorsements on end of envelope:)

In the District Court of the U. S. District of Arizona. No. 33.—(Phx.) Hugh Mackay, Complainant, vs. Norma Mining Company. Deft. Deposition of Mrs. A. F. Root, on Behalf of Defendant. Richard H. Wyman, Notary Public.

Filed Jan. 17, 1916, George W. Lewis, Clerk. By R. E. L. Webb, Deputy. Opened in open Court by order of Court Jan. 20, 1916. George W. Lewis, Clerk. By R. E. L. Webb, Deputy.

(Envelope sealed with two seals by notary public.)  
[144]

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**Plaintiff's Exhibit "A" for Identification—Note,  
August 2, 1913, Norma Mining Co. to Mackay.**

\$16,000.00 DENVER, COLO., AUG. 2ND, 1913.

FOUR MONTHS after date THE NORMA MINING COMPANY promise to pay to the order of HUGH MACKAY—SIXTEEN THOUSAND DOLLARS.

Value received with interest at SIX per cent per annum.

No. ——. Due ——.

THE NORMA MINING COMPANY,

By R. T. ROOT,

President.

(Endorsement on back of note:)

HUGH MACKAY.

Marked Plff's. Ex. "A" for Identification. Admitted and Filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No, E-6—

Prescott. Hugh Mackay vs. Norma Mining Company. [145]

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**Plaintiff's Exhibit "B" for Identification—Realty Mortgage—August 2, 1913, Norma Mining Co. to Mackay.**

**REALTY MORTGAGE.**

**KNOW ALL MEN BY THESE PRESENTS:**

That The Norma Mining Company, a corporation duly organized and existing under the laws of the State of Arizona, Mortgagor, State of Arizona, for and in consideration of SIXTEEN THOUSAND (\$16,000) DOLLARS, to it in hand paid by Hugh MacKay, Mortgagee, has granted, sold and conveyed, and by these presents do grant, sell and convey unto the said Hugh MacKay all that certain premises described as follows, to wit: The following Mining Claims, situate, lying and being in the Indian Secret Mining District, in the County of Mohave, and State of Arizona, viz.: The Putman, The Review, The West Half of The Hulda, The Bonita, The Mountain Scenery, The Chief of the Hill, The Monster, The Peer, The Midway Extension, The Garfield Fraction, The Aquarius, The Grand Central, The Western View, The Lone Star, The Blind Goddess, The Desert Prospect, The Goadstick, The Norma Fraction, The G. A. R. Fraction, The Oversight, The Buckley, The Nora R, The Big Joshua, The Lookout, The Abe Lincoln, The Ellington, The Hillside, The Center, The Little Giant, The Midway, The Prince Albert, The Orient, The Squattum, The Horn Silver, The Rip Van Winkle, The African,

The Norma, The Garfield, The Schaefer's Treasure, The Fraction Quartz, The Emma, The Nellie Blye, The Occident, The Junction, The G. A. R., and The Daisy Mining Claims, together with the mill and machinery therein and the different hoisting plants upon the property.

To have and to hold the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Hugh MacKay, his heirs and assigns forever.

This Conveyance is intended as a Mortgage to secure the payment of One certain Promissory Note, given by the said Mortgagor [146] of date August the second, A. D. 1913, which said note is in words and figures following, to wit:

\$16,000

Denver, Colo., Aug. 2d, 1913.

Four months after date The Norma Mining Co. promises to pay to the order of Hugh Mackay Sixteen Thousand Dollars at Denver, Colo. Value received with interest at six per cent per annum.

THE NORMA MINING CO.

By R. T. ROOT,

President.

In executing this instrument the Mortgagor reserves the right to mine ore and to operate this property in the usual and customary way of mining and operating such property, taking and using any and all proceeds, incomes and profits from said property as fully and to the same extent as if this indenture had not been made, until the property may be sold and conveyed under this mortgage by



reason of default of the payment provided herein, in event that such default should occur.

This instrument is hereby executed and delivered by R. T. Root, as president, by order of the Board of Directors of this Company and said execution and delivery is duly ratified by a meeting of the stockholders of the company at which all shares of stock issued was represented and unanimously voted in favor thereof.

And this instrument shall be void if said Promissory Note, principal and interest be well and truly paid when due, according to the tenor and effect thereof. But it is distinctly understood and agreed that if the interest on said Promissory Note, or the principal thereon, shall not be punctually paid when the same shall become due, as in said Promissory Note mentioned, then, and in such case, the principal sum of said note and the interest thereon shall be deemed and taken to be wholly due and payable, and proceedings may forthwith be had by the said Mortgagee, his heirs, executors, administrators and assigns, for the recovery of the same, either [147] by suit on said Note or on this Mortgage and Note; and in any suit or other proceedings that may be had for the recovery of the said principal sum and interest thereon, it shall and may be lawful for the said Mortgagee, his heirs, executors, administrators or assigns, to include in the judgment that may be recovered, attorneys' fee not exceeding — per cent thereon upon the amount found due the plaintiff on said Note and this Mortgage, or in case of settlement after suit brought, but before judgment

rendered, then — per cent on amount found due at the time of settlement, as well as all payments that the said Mortgagee — heirs, executors, administrators, or assigns may be obliged to make for — security, or on account of any taxes, charges, incumbrances or assessments whatsoever on the said premises, legally laid or made thereon.

Executed this second day of August, A. D. 1913.

THE NORMA MINING COMPANY.

By R. T. ROOT,  
President.

Signed, sealed and delivered in the presence of  
J. M. CLEMENTS.

[Seal of the Norma Mining Company Incorporated.]

State of California,

County of Los Angeles,—ss.

On this 2d day of August, A. D. 1913, before me, Ina Eveished, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared R. T. Root, known to me to be the President of the Norma Mining Company, the Corporation that executed the within Instrument, known to me to be the person who executed the within Instrument, on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same, as its free act and deed for the purposes therein expressed and that the same was by him *voluntary* executed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year

in this certificate first above written.

[Seal] INA EVEISHED,  
Notary Public in and for said County, State of California. [148]

(Endorsements on back of foregoing Mortgage.)

No. —

# REALTY MORTGAGE

From

THE NORMA MINING COMPANY

to

HUGH MACKAY.

Dated — 189—.

Filed and recorded at request of Robinson and Robinson. August 29th, A. D. 1914, at 9 o'clock A. M. Book 4 of Mortgages, pages 172, 173.

J. W. MORGAN,

County Recorder.

[Seal of the County Recorder, Mohave County, Arizona.]

(Notation.)

Marked Plff's. Ex. "B," for identification. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6—Prescott. Hugh Mackay vs. Norma Mining Company. [149]

Plaintiff's Exhibit "C" for Identification—Note,  
March 31, 1914, Norma Mining Co. to Mackay.

\$3,500.

DENVER, COLO., MARCH 31st, 1914.

ON OR BEFORE MAY 1ST, 1914, after date It  
promise to pay to the order of HUGH MACKAY,



THIRTY-FIVE HUNDRED DOLLARS at SEVEN  
PER CENT INTEREST PER ANNUM.

Without defalcation, for value received.

THE NORMA MINING COMPANY.

By R. T. ROOT,  
President.

(Endorsements on back of note:)

HUGH MACKAY.

(Notations.)

Marked Plff's. Ex. "C" for Identification. Ad-  
mitted and filed Aug. 23, 1915. George W. Lewis,  
Clerk. By Effie D. Botts, Deputy. Case No. E-6—  
Prescott. Hugh Mackay. Norma Mining Co.  
[150]

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Plaintiff's Exhibit "D" for Identification—Note,  
March 31, 1914, Norma Mining Co. to Mackay.  
\$1,500.

DENVER, COLO., MARCH 31ST, 1914.

ON OR BEFORE MAY 1ST, 1914, after date IT  
promise to pay to the order of HUGH MACKAY,  
FIFTEEN HUNDRED DOLLARS at SEVEN PER  
CENT INTEREST PER ANNUM.

Without defalcation, for value received.

THE NORMA MINING COMPANY.

By R. T. ROOT,  
President.

(Endorsement on back of note:)

HUGH MACKAY.

(Notation.)

Marked Plff's. Ex. "D" for Identification. Ad-  
mitted and filed Aug. 23, 1915. George W. Lewis,

Clerk. By Effie D. Botts, Deputy. Case No. E-6—  
Prescott. Hugh Mackay vs. Norma Mining Co.  
[151]

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**Plaintiff's Exhibit "E" for Identification—Mort-  
gage, March 31, 1914, Between Norma Mining  
Co. to Mackay.**

THIS INDENTURE, made the thirty-first day of  
March in the year one thousand nine hundred and  
fourteen

BETWEEN THE NORMA MINING COM-  
PANY, a corporation duly organized and existing  
under the laws of the State of Arizona, party of the  
first part, and

HUGH MACKAY, of the City and County of Den-  
ver, State of Colorado, party of the second part:

WHEREAS, the said Norma Mining Company,  
party of the first part, is justly indebted to the said  
party of the second part, in the sum of Five Thou-  
sand (\$5,000) Dollars, lawful money of the United  
States, secured to be paid by two notes or obligation,  
bearing even date herewith, conditioned for the pay-  
ment of the said sum of Five Thousand (\$5,000)  
Dollars, one note for Fifteen Hundred (\$1500) Dol-  
lars and one note for Thirty-five Hundred (3500)  
Dollars, payable on or before May 1st, 1914, with in-  
terest at the rate of seven per cent (7%) per annum.

IT BEING THEREBY EXPRESSLY AGREED,  
That the whole of the said principal sum shall be-  
come due after default in the payment of interest,  
taxes, or assessment, as hereinafter provided.

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant and release unto the said party of the second part, and to his heirs and assigns, forever, ALL the following described patented mining claims, situate, lying and being in the County of Mohave and State of Arizona, to wit, in Indian Secret Mining District in said [152] Mohave County, Arizona, viz.:

The Putman, the Review, the West Half of the Hulda, the Bonita, the Mountain Scenery, the Chief of the Hill, the Monster, the Peer, the Midway Extension, the Garfield Fraction, the Acquarius, the Grand Central, the Western View, the Lone Star, the Blind Goddess, the Desert Prospect, the Goadstick, the Norma Fraction, the G. A. R. Fraction, the Oversight, the Buckley, the Nora R., the Big Joshua, the Lookout, the Abe Lincoln, the Ellington, the Hillside, the Center, the Little Giant, the Midway, the Prince Albert, the Orient, the Squattum, the Horn Silver, the Rip Van Winkle, the African, the Norma, the Garfield, the Schaefer's Treasure, the Fraction Quartz, the Emma, the Nellie Blye, the Occident, the Junction, the G. A. R., and the Daisy Mining Claim; together with all the dips, spurs and angles, and all the metals, ores, gold and silver bearing quartz, rock and earth therein, the old dump



now thereon, and together with the Mill and machinery therein and the different hoisting plants on the property.

Until default shall be made in payments of principal, interest, or some of them, or until defaults shall be made in respect to something herein required to be done, performed or kept by said party of the first part, and until the property herein conveyed shall have been sold and conveyed to said party of the second part or his assigns or other purchaser by reason of such default, the said party of the first part shall be suffered and permitted to possess, operate, manage, lease, use and enjoy the said property hereby conveyed, and every part and parcel thereof, with the full right and privilege of developing, mining, breaking down, extracting, milling, removing, selling and disposing of any and all ores and products of said property, and of taking and using any and all proceeds, rents, royalties, products, incomes or profits from the said property as fully and to the same extent as if this indenture had not been made.

The execution of this mortgage was duly authorized by a meeting of the stockholders of said THE NORMA MINING COMPANY at which meeting all of the shares issued and outstanding were present or represented and voted in favor of a resolution authorizing the execution and delivery hereof, and was also authorized by a resolution of its Board of Directors duly adopted by unanimous vote at a meeting at which all of the directors of said Company were present.

TOGETHER with the appurtenances, and all the

estate and rights of the party of the first part in and to the said premises.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever.

There is a mortgage by aforesaid Grantor to aforesaid Grantee on said property for Sixteen Thousand (\$16,000) Dollars, and some taxes, all of which the Grantor will pay.

PROVIDED ALWAYS, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said [153] party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine, and be void.

AND the said party of the first part covenant with the party of the second part as follows:

FIRST. That ———, the party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises herein described, according to law.

SECOND. That the said party of the first part will execute any further necessary assurance of the title to said premises and will forever warrant said title.

THIRD.

FOURTH. And it is hereby expressly agreed

that the whole of said principal sum shall become due and payable as provided in said notes.

IN WITNESS WHEREOF, the said party of the first part, The Norma Mining Company has hereunto caused these presents to be signed by its President and attested by its Secretary and the seal of said Company to be hereto affixed this thirty-first day of March, A. D. 1914.

THE NORMA MINING COMPANY. [Seal]

By R. T. ROOT, [Seal]  
President.

ATTEST: W. W. ROOT,  
Secretary.

[Seal of the Norma Mining Company Incorporated.]

[154]

State of New York,  
County of New York,—ss.

Before me, Geo. F. Brelsford, a Notary Public in and for said County and State, on this day personally appeared R. T. Root, known to me to be the President of the Norma Mining Company, the Corporation described in the foregoing instrument, and known to me to be the person whose name is subscribed to the foregoing instrument as President of said Company, and, as such Officer, acknowledged to me that he executed the said instrument for said corporation for the purpose and consideration therein expressed, as the free act and deed of said Corporation and that it was by him voluntarily executed.

Given under my hand and seal of office this 31st day of March, A. D. 1914.



My Commission expires March 30, 1916.

[Seal]

GEO. F. BRELSFORD,

Notary Public, New York County #239, N. Y. Register No. 6230.

(Endorsements on back of Mortgage:)

THE NORMA MINING COMPANY

TO

HUGH MACKAY.

MORTGAGE.

Filed and recorded at request of Robinson and Robinson. August 29th, A. D. 1914, at 9 o'clock A. M., in Book 4 of Mortgages, pages 170 et seq. Records of Mohave County, Arizona.

J. W. MORGAN,

County Recorder.

(Notation on back of Mortgage:)

Marked Plff's. Ex. "E" for Identification. Admitted and Filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6—Prescott. Hugh Mackay vs. Norma Mining Company. [155]

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**Plaintiff's Exhibit "F" for Identification—Option,  
February 20, 1908, Root to Mackay.**

**OPTION.**

For value received, I hereby give to Hugh Mackay the option to purchase the following described patented mining claims and personal property situated in the Indian Secret Mining District, at White Hills, Mohave County, Arizona, to wit:

The G. A. R., the Fraction Quartz, the Nora R.,

the Schaefer's Treasure, the west half of the Hulda, the Grand Central, the Oversight, the Emma, the Putman, the Mountain Scenery, the Review, the Chief of the Hill, the Monster, the Bonita, the Nellie Bly, the Garfield, the Blind Goddess, the G. A. R. Fraction, the African, the Norma, the Garfield Fraction, the Prince Albert, the Abe Lincoln, the Big Joshua, the Daisy, the Norma Fraction, the Goadstick, the Midway Extension, the Rip Van Winkle, the Occident, the Western View, the Desert Prospect, the Buckley, the Horn Silver, the Junction, the Orient, the Acquarius, the Little Giant, the Squatum, the Lookout, the Hillside, the Peer, the Ellington, the Midway, the Center, and the Lone Star mining claims. (Errors, if any, in aforesaid description, are subject to correction to correspond with the U. S. patents.) For a more particular description of said mining claims reference is hereby made to the U. S. patents therefor recorded in the office of the County Recorder of said Mohave County, Arizona.

This option is to include all of the buildings upon said mining claims, excepting the Church building and the lot upon which it is located, and the Public school Building, and about three or four other buildings belonging to other persons.

This option includes the mill, and also all of the equipments and personal property upon the following mining claims, viz.—the Grand Central, the G. A. R., the Schaefer's Treasure, the Norma and the Occident, excepting the gasoline engine near the

G. A. R., and the lathe in the Occident mill. No other personal property is included in this option.

This option is given upon the following terms:

The net price to be paid to me by said Mackay for said property is One Hundred and Seventy-five Thousand Dollars (\$175,000).

Any deed made under this option or any modification thereof is to be made to said Hugh Mackay.

This option shall continue in force for thirty days from the date hereof. Time is of essence of this option.

It is expressly understood that this instrument is an option only, giving said Mackay power only to purchase, and is in no way intended to appoint said Mackay as my agent, express or implied, to sell said property or any part thereof.

Witness my hand this 20th day of February, 1908.

R. T. ROOT.

(Notation on bottom in pencil:)

P. return this.

(Notation on back of paper:)

Marked Plff's. Exhibit "F" for Identification. Admitted and Filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6—Prescott. Hugh Mackay vs. Norma Mining Co. [156]



**Plaintiff's Exhibit "H" for Identification—Check,  
4/6/1914, Robinson & Robinson to Mackay.**

No. 4290.

**ROBINSON & ROBINSON,**

Attys. at Law,  
Continental Building.

DENVER, COLO., 4/6/1914.

Pay to the order of HUGH MACKAY \$1810.00  
ONE THOUSAND EIGHT HUNDRED TEN and  
NO/100 DOLLARS.

**ROBINSON & ROBINSON,**

By P. J. ROBINSON.

The Federal National Bank,

Denver, Colo.

(Endorsements on back of check:)

Pay to the order of W. W. ROOT,

HUGH MACKAY.

**W. W. ROOT.**

Received Payment Through Denver

6 Clearing House 6

Apr. 8, 1914

Denver National Bank.

53-56

Pay to the order of

Denver National Bank.

All prior endorsements guaranteed

Apr. 7, 1914.

The German American Trust Co.

2 Denver, Colo. 2

(Notation:)

Marked Plff. Exhibit "H" for identification. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [157]

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**Plaintiff's Exhibit "I" for Identification, Check,  
April 8, 1914, Mackay to Root.**

THE FEDERAL NATIONAL BANK 23-17

DENVER, APR. 8th, 1914. No. —

Pay to the order of W. W. ROOT \$80.00 EIGHTY  
00/100 DOLLARS.

HUGH MACKAY.

(Endorsements on back of note:)

W. W. ROOT.

23-56

Pay to the order of  
Denver National Bank.

All prior endorsements guaranteed

APR. 8, 1914.

THE GERMAN AMERICAN TRUST CO.

2      Denver, Colo.      2

Received payment through Denver

Clearing House

6      APR. 9, 1914.      6

Denver National Bank.

Plff. Exhibit "I" for identification. Admitted and filed Aug. 24, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [158]

**Plaintiff's Exhibit "J" for Identification—Check,  
April 9, 1914, Mackay to Root.**

THE FEDERAL NATIONAL BANK 23-17.

DENVER, Apr. 9, 1914. No. 3.

Pay to the order of W. W. ROOT \$150.00 ONE  
HUNDRED and FIFTY 00/100 DOLLARS.

HUGH MACKAY.

(Endorsements on back of check:)

W. W. ROOT.

By H. M. ROOT.

23-56

Pay to the order of  
Denver National Bank.

All prior endorsements guaranteed

APR. 10, 1914.

THE GERMAN AMERICAN TRUST CO.

2 Denver, Colo. 2

Received payment through Denver  
Clearing House

6 APR. 11, 1911. 6

Denver National Bank.

(Notation:)

Marked Plff. Exhibit "J" for identification. Ad-  
mitted and filed. George W. Lewis, Clerk. By  
Effie D. Botts, Deputy. E-6-Prescott. Hugh Mac-  
kay vs. Norma Mining Co. [159]



**Plaintiff's Exhibit "L" for Identification—Check,  
April 22, 1914, Mackay to Root.**

THE FEDERAL NATIONAL BANK 23-17.

DENVER. APR. 22, 1914. No. 19.

Pay to the order of W. W. ROOT \$1000.00 ONE  
THOUSAND 00/000 DOLLARS.

HUGH MACKAY.

(Endorsements on back of check:)

W. W. ROOT.

23-56

Pay to the order of

DENVER NATIONAL BANK

All prior endorsements guaranteed

APR. 22, 1914.

THE GERMAN AMERICAN TRUST CO.

2      Denver, Colo.      2

Received payment through Denver  
Clearing House

6      APR. 23, 1914.      6

DENVER NATIONAL BANK.

(Notation:)

Marked Plff. Exhibit "L" for identification. Ad-  
mitted and filed Aug. 25, 1915. George W. Lewis,  
Clerk. By Effie D. Botts, Deputy. E-6-Prescott.  
Hugh Mackay vs. Norma Mining Co. [160]

**Plaintiff's Exhibit "M" for Identification—Check,  
April 22, 1914, Mackay to Root.**

THE FEDERAL NATIONAL BANK 23-17.

DENVER, APR. 22, 1914. No. 20.

Pay to the order of W. W. ROOT \$500.00 FIVE  
HUNDRED 00/100 DOLLARS.

HUGH MACKAY.

(Endorsements on back of ~~note~~ check:)

W. W. ROOT.

23-56

Pay to the order of

DENVER NATIONAL BANK

All prior endorsements guaranteed

APR. 22, 1914.

THE GERMAN AMERICAN TRUST CO.

2 Denver, Colo. 2

RECEIVED PAYMENT THROUGH DENVER  
CLEARING HOUSE

6 APR. 23, 1914. 6

DENVER NATIONAL BANK

(Notation:)

Marked Exhibit "M" for identification. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [161]

**Plaintiff's Exhibit "N" for Identification—Check,  
April 23, 1914, Mackay to Root.**

THE FEDERAL NATIONAL BANK 23-17.

DENVER, APR. 23, 1914. No. 29.

Pay to the order of W. W. Root \$125.00 ONE  
HUNDRED and TWENTY-FIVE 00/100 DOL-  
LARS.

HUGH MACKAY.

(Endorsements on back of check:)

W. W. ROOT.

23-56

Pay to the order of

DENVER NATIONAL BANK

All prior endorsements guaranteed

APR. 23, 1914.

THE GERMAN AMERICAN TRUST CO.

2 Denver, Colo. 2

RECEIVED PAYMENT THROUGH DENVER  
CLEARING HOUSE

6 APR. 24, 1914. 6

DENVER NATIONAL BANK.

(Notation:)

Marked Plff. Exhibit "N" for identification. Ad-  
mitted and filed Aug. 25, 1915. George W. Lewis,  
Clerk. By Effie D. Botts, Deputy. Hugh Mackay  
vs. Norma Mining Co. [162]



**Plaintiff's Exhibit "O" for Identification—Check,  
April 25, 1914, Mackay to Root.**

THE FEDERAL NATIONAL BANK 23-17.

DENVER, APR. 25, 1914. No. 33.

Pay to the order of W. W. Root \$183.58 ONE  
HUNDRED and EIGHTY-THREE. 58/100 DOL-  
LARS.

HUGH MACKAY.

(Endorsements on back of check:)

W. W. ROOT.

23-56

Pay to the order of

DENVER NATIONAL BANK

All prior endorsements guaranteed

APR. 25, 1914.

THE GERMAN AMERICAN TRUST CO.

3 Denver, Colo.

RECEIVED PAYMENT THROUGH DENVER  
CLEARING HOUSE

6 APR. 27, 1914. 6

DENVER NATIONAL BANK.

(Notation:)

Marked Plff. Exhibit "O" for identification. Ad-  
mitted and filed Aug. 25, 1915. George W. Lewis,  
Clerk. By Effie D. Botts, Deputy. E-6-Prescott.  
Hugh Mackay vs. Norma Mining Co. [163]

**Plaintiff's Exhibit "P" for Identification—Check,  
April 21, 1914, Mackay to Root.**

**THE FEDERAL NATIONAL BANK 23-17.**

**DENVER, APR. 21, 1914. No. 17.**

**Pay to the order of Walter W. Root \$7.00 SEVEN  
00/100 DOLLARS.**

**HUGH MACKAY.**

**(Endorsements on back of check:)**

**WALTER W. ROOT.**

**W. W. ROOT.**

**23-56**

**Pay to the order of  
DENVER NATIONAL BANK.**

**All prior endorsements guaranteed**

**APR. 21, 1914.**

**THE GERMAN AMERICAN TRUST CO.**

**2      Denver, Colo.      2**

**RECEIVED PAYMENT THROUGH DENVER  
CLEARING HOUSE**

**6      APR. 22, 1914.      6**

**DENVER NATIONAL BANK.**

**(Notation:)**

**Marked Plff. Exhibit "P" for identification. Ad-  
mitted and filed Aug. 25, 1915. George W. Lewis,  
Clerk. By Effie D. Botts, Deputy. E-6-Prescott.  
Hugh Mackay vs. Norma Mining Co. [164]**

**Plaintiff's Exhibit "Q" for Identification—Note,  
November 24, 1913, Root to Meier.**

\$450.00

DENVER, COLO., NOV. 24, 1913.

ON OR BEFORE DEC. 1st, 1913, after date I  
promise to pay to the order of THEODORE L.  
MEIER, FOUR HUNDRED and FIFTY —  
DOLLARS at DENVER, COLO.

Value received with interest at SIX per cent per  
annum. No. —. Due —.

R. T. ROOT.

(Endorsements on back of note:)

HUGH MACKAY.

Without recourse.

THEODORE L. MEIER.

(Notation:)

Marked Plff. Exhibit "Q" for identification. Ad-  
mitted and filed Aug. 25, 1915. George W. Lewis,  
Clerk. By Effie D. Botts, Deputy. E-6-Prescott.  
Hugh Mackay vs. Norma Mining Co. [165]

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**Plaintiff's Exhibit "R" for Identification—Note,  
December 1, 1913, Root to Meier.**

\$500.00

DENVER, DEC. 1st, 1913.

ON DEMAND after date I promise to pay to the  
order of THEODORE MEIER, FIVE HUNDRED  
DOLLARS at DENVER, COLO.



Value received with interest at SIX per cent per annum. No. ——. Due ——.

R. T. ROOT.

(Endorsements on back of note:)

HUGH MACKAY.

Without recourse on me.

THEODORE MEIER.

(Notation:)

Marked Plff. Exhibit "R" for identification. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [166]

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**Plaintiff's Exhibit "T" for Identification—Note,  
November 25, 1912, Treasure Mining and Re-  
duction Co. to Mackay.**

\$2500.00. DENVER, COLO., NOV. 27TH, 1912.

DEC. 11TH, 1912, after date WE promise to pay to the order of HUGH MACKAY, TWENTY-FIVE HUNDRED DOLLARS at DENVER, Colo.

Value received with interest at SIX per cent per annum. No. ——. Due ——.

THE TREASURE MINING AND REDUC-  
TION CO.

By R. T. ROOT,  
General Manager.

(Endorsements on back of note:)

Notice protest and nonpayment waived.

R. T. ROOT.

Decemb. 15, 1912.

Paid on within note \$1250.00.

Apr. 22d, 1913.

This note is paid by the sum of \$1284.10 being credited thereon and charged to amount of \$3000.00 due Root for notes of \$3250.00 given to Est. dated Apr. 22, 1913, and for which 3000 Mackay gave Root his personal due bill for Sept. 1, 1913.

(Notation:)

Plff's. Exhibit "T" for identification. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [167]

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**Plaintiff's Exhibit "U" for Identification—Note,  
November 27, 1912, Treasure Mining and Re-  
duction Co. to Mackay.**

\$2500.00.

DENVER, COLO., NOV. 27TH, 1912.

DEC. 11TH, 1912, after date WE promise to pay to the order of HUGH MACKAY, TWENTY-FIVE HUNDRED DOLLARS at DENVER, COLO.

Value received with interest at SIX per cent per annum, after due.

THE TREASURE MINING AND REDUC-  
TION CO.

No. ——. Due ——.

By R. T. ROOT,  
General Manager.

(Endorsements on back of note:)

Notice protest and nonpayment waived.

R. T. ROOT.

Decemb. 15th, 1912.

Paid on within note \$1250.00.

Apri. 22, 1913.

R. T. Root gets credit for Bal. of this note in full \$1284.10, same being charged as an offset against the sum of \$3000.00 due Root on his note given Miller Est. dated Apr. 22, 1913, for which \$3000.00 Mackay gave R. T. Root his personal due bill for Sept. 1, 1913.

(Notation on back of note:)

Plff. Exhibit "U" for identification. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [168]

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**Plaintiff's Exhibit "V" for Identification—Receipt,  
July 18, 1912, Root to Mackay.**

R. T. ROOT.

Box 114, DENVER, COLO.

July 18, 1912.

Received from Hugh Mackay Bonds #84, 85, 86, 87 and 88, for \$1000.00 each, making total \$5000.00 of the Treasure Mining and Reduction Co. maturing March 1st, 1914. I will return these bonds to you within 10 days or pay you within that time the balance due on the two notes for which they are held as collateral.

These notes dated Nov. 27th, 1912.

R. T. ROOT.

(Endorsement on back of paper:)



Mackay's interest in proceeds received by Root from the sale of the bonds mentioned in within receipt, viz. \$258.20 has been charged to Root, Apr. 22, 1913.

(Notation:)

Plff. Exhibit "V" for identification. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [169]

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**Defendant's Exhibit 1 for Identification—Receipt,  
August 2, 1913, Mackay to Root.**

HOTEL ALEXANDER.

Los Angeles, Aug. 2d, 1913.

Received from R. T. Root a note for \$16000.00 of this date due to my order in 4 months, and a mortgage on 46 patented mining claims in White Hills, Mohave Co., Arizona, executed to me to secure said note, and both the note and the mortgage are executed by the Norma Mining Co. (an Arizona corporation), and said Root informs me that the said 46 mining claims stand in the name of said company on the records of said County.

I have recvd this mortgage and note for the purpose of selling them, and if sold pay from the proceeds recvd from their checks aggregating about \$10,000.00 held by me as executor of the George Miller Estate, which said checks are signed by said Root, and after paying said checks the net balance recvd for said note and mortgage is to be turned over to said Root by me. Said Root says he is now negotiat-

ing for a loan upon said property. If he makes a loan he is to make a mortgage on said property and notify said Mackay and if Mackay has not sold said note and mortgage first referred to herein, he is to return same to me, or if said Mackay fails to sell said note and mortgage within one month from date he is to return them to me and the said mortgage first herein referred to is not to be recorded unless sold by said Mackay or his assistants. Said note and Mortgage was first made for \$20,000.00 but afterwards & before I received them they were changed to \$16,000.00 in lieu thereof.

HUGH MACKAY.

(Notation on back of paper:)

Marked Defts. Exhibit #1 for identification. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [170]

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**Defendant's Exhibit 2 for Identification—Receipt,  
March 31, 1914, Mackay to Root.**

No. —

New York City, N. Y. Mch. 31, 1914.

NEW YORK CITY, N. Y. MCH. 31, 1914.

Recvd. from R. T. Root two notes, one for 3500 and the other for 1500, together with a mortgage to same, executed by the Norma Mining Co., on 46 patent mining claims at White Hills, Mohave Co. Arizona. Said notes due on or before May 1/14 and payable to the order of Hugh Mackay.

Recvd for purpose of loan for those amount. If loan made the said notes and mortgage returned to me or to either of my sons.

The money also may be paid to H. M. Root or W. W. Root.

HUGH MACKAY.

(Notation on back.)

Marked Defts. Exhibit #2 for identification. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6—Prescott. Hugh Mackay vs. Norma Mining Co. [171]

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**Defendant's Exhibit 3—Check, June 9, 1913, Root to Mackay.**

DENVER, COLORADO, JUNE 9TH, 1913.

No. —

COLORADO NATIONAL BANK.

Pay to the order of HUGH MACKAY, EX., \$1543.76, FIFTEEN HUNDRED FORTY-THREE and 76/100 DOLLARS.

R. T. ROOT.

(Written across face of check:)

Cancelled.

(Notation on back of check.)

Marked Defts. Exhibit #3. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott. [172]

No. —



**Defendant's Exhibit 4—Check, June 9, 1913, Root  
to Mackay.**

DENVER, COLORADO, JUNE 9th, 1913.

No. —

COLORADO NATIONAL BANK.

Pay to the order of HUGH MACKAY, EX.,  
\$4,906.72, FOUR THOUSAND NINE HUNDRED  
EIGHTY-SIX & 72/100 DOLLARS.

R. T. ROOT.

(Written across face of check:)

Cancelled.

(Notation on back of check.)

Marked Defts. Exhibit #4. Admitted and filed  
Aug. 23, 1915. George W. Lewis, Clerk. By Effie  
D. Botts, Deputy. No. E-6—Prescott. [173]

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**Defendant's Exhibit 5—Check, May 29, 1913, Root  
to Mackay.**

DENVER, COLORADO, MAY 29TH, 1913.

No. —

COLORADO NATIONAL BANK.

Pay to the order of HUGH MACKAY, EX.,  
\$416.81, FOUR HUNDRED SIXTEEN and 81/100  
DOLLARS.

R. T. ROOT.

(Written across face of check:)

Cancelled.

(Notation on back of check.)

Admitted and filed Aug. 23, 1915. Marked Defts. Exhibit #5. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott. [174]

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**Defendant's Exhibit 6—Check, May 23, 1913, Root to Mackay.**

No. X.

DENVER, COLORADO, MAY 23D, 1913.

COLORADO NATIONAL BANK.

Pay to the order of HUGH MACKAY, EX.,  
\$500.00 FIVE HUNDRED DOLLARS.

R. T. ROOT.

(Written across face of check:)

Cancelled.

(Notation on back of check.)

Marked Defts. Exhibit #6,. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott. [175]

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**Defendant's Exhibit 7—Check, May 29, 1913, Root to Mackay.**

DENVER COLORADO, May 29TH, 1913.

No. —

COLORADO NATIONAL BANK.

Pay to the order of HUGH MACKAY, EX.,  
\$1288.89 TWELVE HUNDRED EIGHTY-EIGHT  
& 89/100 DOLLARS.

R. T. ROOT.

(Notation on back of check.)

Marked Defts. Exhibit No. 7. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott.

(Written across face of check:)

Cancelled. [176]

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**Defendant's Exhibit 8—Check, June 11, 1913, Root to Mackay.**

DENVER, COLORADO, JUNE 11TH, 1913.

No. —

COLORADO NATIONAL BANK.

Pay to the order of HUGH MACKAY, EX.,  
\$300, THREE HUNDRED DOLLARS.

R. T. ROOT.

(Notation on back of check.)

Marked Defts. Exhibit No. 8. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott.

(Written across face of check:)

Cancelled. [177]

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**Defendant's Exhibit 9—Note, September 16, 1911, Root to Mackay.**

\$4455.00 DENVER, COLO., SEPT. 16th, 1911.

ON DEMAND after date I promise to pay to the order of HUGH MACKAY, Executor, FORTY-FOUR HUNDRED and FIFTY-FIVE DOLLARS at DENVER, COLO.

Value received with interest at SEVEN per cent per annum. NO. 1. DUE —.

R. T. ROOT.



(Endorsements on back of note:)

Aug. 2, 1913. Int. to date Cr. \$584.94.

From Aug. 2, 1913, Int. to be 6%.

(Notation on back of note.)

Marked Defts. Exhibit #9. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott. [178]

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**Defendant's Exhibit 10—Note, December 13, 1911,  
Root to Mackay.**

\$1400. DENVER, COLO., DEC. 13th, 1911.

ON DEMAND after date I promise to pay to the order of HUGH MACKAY, Executor, FOURTEEN HUNDRED DOLLARS at DENVER, COLO.

Value received with interest at SEVEN per cent per annum. NO. 2. DUE —.

R. T. ROOT.

(Endorsement on back of note:)

Aug. 2, 1913, Int. credited to date \$160.34.

From Aug. 2, 1913, Int. to be charged at rate of 6%.

(Notation on back of note.)

Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott. Marked Defts. Exhibit #10. [179]

**Defendant's Exhibit 11—Note, December 19, 1912,  
Root to Mackay.**

\$1655.00 DENVER, COLO., DEC. 19TH, 1912.

ON DEMAND after date I promise to pay to the order of HUGH MACKAY, Executor, SIXTEEN HUNDRED and FIFTY-FIVE DOLLARS at DENVER, COLO.

Value received with interest at SEVEN per cent per annum. NO. 3. Due —.

R. T. ROOT.

(Endorsements on back of note:)

Aug. 2, 1913. Int. credit to date \$71.77.

From Aug. 2, 1913, Int. to be 6%.

(Notation on back of note.)

Marked Defts. Exhibit #11. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott. [180]

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**Defendant's Exhibit 12—Note, April 22, 1913, Root to Mackay.**

\$3250.00 DENVER, COLO., APR. 22nd, 1913.

ON DEMAND after date I promise to pay to the order of HUGH MACKAY, EXECUTOR, THIRTY-TWO HUNDRED and FIFTY DOLLARS at DENVER, COLO.

VALUE received with interest at SEVEN per cent per annum. NO. 4. DUE —.

R. T. ROOT.

(Endorsements on back of note:)

Int. credited to Aug. 2, 1913. \$63.19.

From Aug. 2, 1913, Int. to be charged at rate of 6% only.

(Notation on back of note.)

Marked Defts. Exhibit #12. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott. [181]

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**Defendant's Exhibit 13—Note, May 25, 1913, Root to Mackay.**

\$1550.00 DENVER, COLO., MAY 25th, 1913.

ON DEMAND after date I promise to pay to the order of HUGH MACKAY, EXECUTOR, FIFTEEN HUNDRED and FIFTY DOLLARS at DENVER, COLO.

Value received with interest at SEVEN per cent per annum. NO. 5. DUE —.

R. T. ROOT.

(Endorsements on back of note:)

Int. Credited to Aug. 2, 1913. \$20.45.

From Aug. 2, 1913, to be 6%.

(Notation on back of note.)

Defts. Exhibit #13. Marked. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott. [182]

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**Defendant's Exhibit 14—Note, June 19, 1913, Root to Mackay.**

\$1100.00 DENVER, COLO., JUNE 19th, 1913.

ON DEMAND after date I promise to pay to the order of HUGH MACKAY, EXECUTOR,



ELEVEN HUNDRED DOLLARS, at DENVER, COLO.

Value received with interest at SEVEN per cent per annum. No. 6. Due ——. R. T. ROOT.

(Endorsements on back of note:)

Int. to Aug. 2, 1913. Cr. \$9.35.

From Aug. 2, 1913, Int. to be 6%.

Marked Defts. Exhibit #14. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott. [183]

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**Defendant's Exhibit 15—Note, August 22, 1913, Root to Mackay.**

\$2590.00. DENVER, COLO., AUG. 2nd. 1913.

ON DEMAND after date I promise to pay to the order of Hugh MACKAY EXECUTOR, TWENTY-FIVE HUNDRED and NINETY DOLLARS at DENVER, COLO.

Value received with interest at SEVEN per cent per annum. NO. 7. DUE ——. R. T. ROOT.

(Endorsements on back of note:)

This note represents the amt. of \$1680 Int. for 2 years on 14,000 note & 910. Int. on notes 1 to 6, to Aug. 2, 1913. \$2590.00, and Int. on this note to be charged at 6% from its date.

(Notation.)

Marked Defts. Exhibit #15. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. No. E-6—Prescott. [184]

**Letter, June 19, 1913, Root to Mackay.**

R. T. ROOT.

Box 114, Denver, Colo.

Denver, Colo., June 19, 1913.

Mr. Hugh Mackay, Ex. of Est. of G. Miller, Dec.

Denver, Colo.

Dear Sir:—

I need \$1000.00 temporarily—if you have it to spare in the Estate funds I will give you a check for it which you are to hold for 25 days and any time same is presented to the Bank upon which it is made after said 25 days it will be paid.

Recently I gave you checks, payable upon short notice, said checks were for demand loans which had been made to me by said Estate aggregating \$9036.18. I will also arrange so that at any time after 30 days from today, upon which said checks are presented for payment by yourself as executor at the bank upon which they are made, they the said checks shall be promptly paid.

I will also pay said estate interest on the amounts comprised in the aforesaid checks aggregating \$9036.18 from the dates of each check respectively until they are cashed at the rate of Seven per cent (7%) per annum and also on the amount of the aforesaid \$1000.00 in like manner.

R. T. ROOT.

Denver, Colo., June 19, 1913.

I, Hugh Mackay, Executor of the Estate of George Miller, dec., will give you the \$1000.00 as requested

having full confidence that you will do as you have stated.

HUGH MACKAY, ES. [185]

Marked Defts. Exhibit #16. Admitted and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6—Prescott. Hugh Mackay vs. Norma Mining Co.

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**Defendant's Exhibit 17—Check, June 19, 1913, Root to Mackay.**

Denver, Colorado, June 19th, 1913. No.  
COLORADO NATIONAL BANK.

Pay to the order of HUGH MACKAY, EX.,  
\$1,000.00, One Thousand DOLLARS.

R. T. ROOT.

(Written across face of check:)

“Cancelled.”

(Endorsement on back.)

Marked Defts. Exhibit #17. Admitted and Filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6—Prescott. Hugh Mackay vs. Norma Mining Company. [186]



**Defendant's Exhibit 18—Receipt, April 22, 1913,  
Root to Mackay.**

R. T. ROOT.

Box 114, Denver, Colo.

Denver, Colo., April 22, 1913.

Received from Hugh Mackay, Executor, \$3250.00  
and gave my note on demand for same at 7% int. per  
annum.

R. T. ROOT.

(Endorsements on back of note:)

Receipt for Note No. 4.

Int. pd. to Aug. 2, 1913. \$63.19.

The amount represented in this voucher has been  
duly credited Root's Acct. in which he received full  
value in cash and its equivalent from Hugh Mackay.

Marked Defts. Exhibit #18. Admitted and Filed  
Aug. 23, 1915. George W. Lewis, Clerk. By Effie  
D. Botts, Deputy. Case No. E-6—Prescott. [187]

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**Defendant's Exhibit 19—Note, August 30, 1913,  
Mackay to Root.**

R. T. ROOT.

Box 114, Denver, Colo.

DENVER, COLO., Aug. 30th, 1913.

This is to certify that on a certain matter I owe  
R. T. Root, \$3000.00.

HUGH MACKAY.

(Notation on back of note.)

Defts. Exhibit #19. Admitted subject to plain-  
tiff's objection. Filed Aug. 23, 1915. George W.

Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6—Prescott. Hugh Mackay vs. Norma Mining Co. [188]

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**Defendant's Exhibit 21—Excerpts from Minute-Book of Norma Mining Co.**

(Taken from the Minute-Book of the Norma Mining Company, Pages 15, 16 and 17.)

JULY 15, 1911.

A duly called meeting of the board of directors of the Norma Mining Co. was held at ten o'clock A. M.

On Motion and ballot the resignation of F. W. Lowery as Secretary and also as director of said company was both accepted.

On Motion and ballot the resignation of F. W. Lowery as Vice-President of said Company was accepted.

One share of the Capital Stock of said Norma Mining Co. was transferred from F. W. Lowery to H. M. Root.

On Motion and ballot said H. M. Root was elected a director of the Norma Mining Company to fill the vacancy caused by the resignation of said Lowery.

On Motion and ballot H. M. Root was elected Secretary of the Norma Mining Company.

On Motion and ballot W. W. Root was elected Vice-President of the Norma Mining Co.

On Motion and ballot it was ordered that the deed of the property at White Hills, Arizona, from D. H. Moffat and wife to the Norma Mining Com-

pany be filed for record in the County recorder's Office at Kingman, Arizona.

On Motion and ballot it was ordered that H. M. Root personally take the said deed to Kingman, Arizona for record.

On Motion adjourned.

R. T. ROOT,  
President.

H. M. ROOT,  
Secretary.

DEC. 26th, 1911.

A meeting regularly called of the board of directors of the Norma Mining Co., was held at 10 o'clock A. M.

On Motion and ballot the following additional by-law was adopted and to be known as Article 15.

That the board of directors may meet in any town or City in any State or Territory of the United States at any time or at any different times for the purpose of supervising and conducting the affairs of this corporation and for transacting any business which might or could come before it for benefit of the Co. Any by-law or any part of any by-law of this Company in conflict with this Article 15 is hereby suspended. [189]

The minutes of the meeting of July 15, 1911, and the minutes of this meeting are read and approved.

On Motion adjourned.

R. T. ROOT,  
President.

H. M. ROOT,  
Secretary.



MARCH 1st, 1915.

A duly called meeting of the board of directors of the Norma Mining Co. Held at ten A. M.

The resignation of W. W. Root as Director and also as Vice-President of the Norma Mining Co. was offered and on Motion and ballot was accepted.

On Motion adjourned.

R. T. ROOT,  
President.

H. M. ROOT,  
Secretary.

MARCH 15, 1915.

A duly called meeting of the board of directors of THE NORMA MINING CO. was held at ten o'clock A. M.

One share of the capital stock of the Norma Mining Co. having been delivered by W. W. Root to Chas. W. Hoover.

On Motion and ballot said Chas. W. Hoover was elected a director of the Norma Mining Co.

On Motion and ballot Chas. W. Hoover was elected Vice-President of the Norma Mining Co.

The minutes of this meeting were read and approved.

The minutes of the meeting of March 1st, 1915 were read and approved.

On Motion adjourned.

R. T. ROOT,  
President.

H. M. ROOT,  
Secretary.

(Notation on cover of Minute-book.)

Defts. Exhibit #21. Admitted and filed Aug. 23, 1915. E-6-Prescott. George W. Lewis, Clerk. By Effie D. Botts, Deputy. [190]

Defendant's Exhibit 20 for Identification—Statement of Account.

1910	Mackay to Root	Est. Loans Demand.	Mch. 28— Root to Mackay	
Mch. 2	150.00	150.00	Mch. 26	10.00
	75.	75.00	Apr. "	50.00
	100.	100.00	May 5	20.00
17	115	115.00	June 6	250.00
21	150	150.00	8	250.00
22	275	50.00	11	100.00
24	50	275.00	27	50.00
26		50.00		250.00
30	85	85.00	July 20	56.25
				50.00
Apr. 12	\$1000	250.00	25	150.00
16		250.00	27	50.00
May 6		20.00	Sep. 8	25.00
16	500	500.00	10-20	95.00
June 1		250.00	Oct. 7	30.00
9	This loan dated Mch. 22, 1910, as per Est.	800	17	150.00
11	Report filed Sept. 2, 1911.			
	Total Amt. \$2300	250.00	18	100.00
29	Int. credited by Est. to Aug. 29, 1911, \$199.15	56.25	20	50.00
July 26		150.00	Nov. 2	150.00
Sept. 7		100.00	Dec. 1	250.00
Oct. 17		30.00	13	150.00
"		150.00	19	100.00
21		150.00	20	85.00
Nov. 2		150.00	Feb. 9	250.00
12		275.00	17	750.00

[illegible]

[191]

\$15908.75



Marked Defts Exhibit #20 for Identification. Excluded and filed Aug. 23, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6-Prescott. Hugh Mackay vs. Norma Mining Co.

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**Defendant's Exhibit 22—Letter, February 13, 1914,  
Mackay to Root.**

HUGH MACKAY,  
402 Exchange Building,  
Denver, Colo.  
P. O. Box, 195.

DENVER, COLO., FEB. 13, 1914.

Dear Mr. Root:

I wrote you yesterday, and hope I made it plain that there is no use of your expecting me to sell the 16000.00 note with 3000 taxes against the property, no abstract &c.

My impression is that if you expect the money to pay the estate from that source you better have a new mortgage properly made for enough to pay the estate and taxes and any expense in selling the mortgage.

However it is up to you now. I had to explain these loans, including Lowery's to the limit, and stated the facts, viz., that the money was obtained with the understanding that it would be paid on demand and as good as if in the bank. That I took the security when I could not get payment to prevent the possibility of a loss, that I acted in good faith in the matter, and that how I believed you would pay whenever you returned from New York

State, which I expected you would in ten days or two weeks, and as soon as you returned you would come up with me and would explain the transaction. Everything is left stand until you get here. I hope to goodness you will hustle the money and pay before then.

Truly yours,  
HUGH MACKAY.

(Endorsements on back:)

Marked Defts. Exhibit #22. Admitted and Filed Aug. 24, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [192]

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**Defendant's Exhibit 23—Letter, February 12, 1914,  
Mackay to Root.**

HUGH MACKAY,  
402 Exchange Building,  
Denver, Colo.  
P. O. Box 195.

Denver, Colo., Feb. 12, 1914.

Mr. R. T. Root,  
Dear Sir:

There is no use of your sending an indirect telegram saying for me to extend 16000 note &c. The 16000 note is over due and cannot be handled unless the taxes are paid or enough reserved out of the amount to pay them &c. It would not be enough to cover all. I wired you a man sort of promised to make a \$22000.00 loan at 8% 6 months \$1500.00 loans. Why did you not answer me. It would

take a tangible request from the maker to extend a note, and it should be direct. Anyhow the acknowledgment must be corrected on the mortgage before you could handle excepting with a person whom you would know and went by what you would tell him. I am notified that no further delay will be allowed in this matter. I got it staved off until you will return I said 10 days. I said on your return you would come up with me to the Court House and explain these loans. I had to admit that the loans were made temporarily on demand, that I believed they would be meet as stated, but had to take these securities when the time came. You can corroborate all I said. However, the money must be paid without delay. Get it some way even if you have to make a sacrifice, if you think the show is good to get it there I will come at once, although in all fairness you should send me expense money. You provide it for others.

HUGH MACKAY.

(Notation on side of letter.)

It is important that you advise me promptly of what you can do, unless settlement can be made this 16000 Mort. must be recorded, that I cannot prevent.

Marked Defts. Exhibit #23. Admitted and Filed Aug. 24, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [193]



**Defendant's Exhibit 24—Night-Lettergram, February 8, 1914, R. T. R. to H. M. R.**

**TELEGRAM.**

**WESTERN UNION.**

**NIGHT LETTER.**

**FEBY. 8th, 1914.**

**H. M. R.**

Denver.

Tell Mackay to write nine months extension from December first on back of Norma note and get money from his man on that note if possible. It will be much easier to get that size note cashed but if he cant arrange it there tell him come here immediately and I will go with him to Brooks and others. Find Mackay early monday period. Has Morrison matter been answered.

**R. T. R.**

Defts. Exhibit #24. Admitted and Filed Aug. 24, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6-Prescott. Hugh Mackay vs. Norma Mining Company. [194]

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**Defendant's Exhibit 25—Telegram, February 10, 1914, Mackay to Root.**

**TELEGRAM.**

**A314D AQU47 N L X**

Denver, Colo., Feb. 10th, 1914.

**R. T. ROOT, Western Union Main Office,  
New York.**

Serious prompt action necessary man says per-

haps he may take twenty-two at eight fifteen hundred B time six only cant you arrange matter there would come if party sends expense if not arrange new one two tens one two and mail cant change old one answer.

H. MACKAY,

144AM11th.

144AM11th. [195]

Marked Defts. Exhibit #25. Admitted and Filed Aug. 24, 1915. George W. Lewis, Clerk. By Effie R. Botts, Deputy. Case No. E-6-Prescott. Hugh Mackay vs. Norma Mining Company. [195]

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**Defendant's Exhibit 26—Letter, August 9, 1913,  
Mackay to Root.**

HUGH MACKAY,  
401 Exchange Building,  
Denver, Colo.  
P. O. Box 195.

DENVER, COLO., Aug. 9, 1913.

Dear Mr. Root:

Mr. Wyberg left here the night before I arrived. If I had been a day sooner Mr. Robinson would have arranged for my presenting the matter, and then if he asked him for advice he would have done all he could to get it through. However, he said he would not go east after him with it. He said money would not hire him to do it. But he said if you see him, and that he refers the matter to me which he would then I shall do all in my power to get it through. But for him to go to him advising

him to loan on an old mining property he would not do it, but if Mr. Wyberg took the matter up with me, and asked his advice he would do the looking in to the title; and would recommend it as he had no doubt that it was good for the money.

Now two of the heirs will arrive here on the 18th, and wrote asking if I would be on hand. I wrote I would. Now would it not be best that I record this deed and have it ready. The amount will cover all necessary. It would only be a matter of the class of security with the Court and the heirs.

Now furthermore, we must sell it and get the cash. You had better take the first train for here and I will go with you to Wyberg, and I believe we can do the business, but in the mean time the only safe way for kind of preparation is to have it recorded so as to offer it as security. Wire what you think of this at once, and follow it up with a letter to me direct stating what to do, as I do not want to have to show your checks if I can help it.

Truly yours,

HUGH MACKAY.

Marked Defts. Exhibit #26. Admitted and Filed Aug. 24, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. Case No. E-6-Prescott. Hugh Mackay vs. Norma Mining Company.



**Defendant's Exhibit 27—Letter, September 6, 1913,  
Mackay to Root.**

HUGH MACKAY,  
402 Exchange Building,  
Denver, Colo.  
P. O. Box 195.

DENVER, COLO., Sept. 6, 1913.

Dear Mr. Root:

Another heir of the Miller Est. arrived from California in Denver Thursday night. Friday he put in his time at the office of the County Court Clerk. I did not know that he was expected here, and did not see him until he dropped in to my office Friday at 4 P. M. and announced who he was, after talking a little with him. I asked when he arrived, he said yesterday. This forenoon he said I went up to the County Court to the Office of the probate court to look up matters he desired information upon. Did not tell me anything further in the matter.

He said he understood I was to make a distribution of part of the Est. at this time. I said Yes, that I expected a loan one of the largest the Est. made to be paid within a few days, then I would file my report and include with it the order for distribution. Today, Saturday, I meet him by appointment, and went over matters with him again. I told him the mortgages given on the Arizona property I agreed to hold temporarily as the party expected to pay by Sept. 2nd, but was now out of the City, and that when he returned, which would be

within a few days, I had no doubt but that he would pay up. He said he would not keep mortgages without being recorded. I told him this was only temporarily, and that the party was good, a man of very large means as I understood the matter. He said all right I shall stay here until the matter is settled, and I may winter here he said. I said I was glad to hear that. I told him I did not expect to let the Est. lose one nickel that came in to my possession, or the increase therefrom. He said he believed it, but said in the event the loan from which you calculate to make the distribution is not paid in a few days, the mortgage must be recorded, either paid or recorded no matter what the security is.

I went over to Walter yesterday to wire you of his being here, and etc. I do not know whether he advised you or not. He told me you wire in N. Y. wanted Wiberg's address, I went to Robinson and got it and took it over at 2 P. M. No one was in, and I put it in through the door. I talked with him over the phone last night, he said he found the address at the house at noon.

Hope this matter may be cleaned up before I am called to Court House,

Truly yours,

HUGH MACKAY.

Marked Defts. Exhibit #27. Admitted and Filed Aug. 24, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. [197]

**Defendant's Exhibit 28—Letter, August 27, 1914,  
Mackay to Root.**

HUGH MACKAY,  
402 Exchange Building,  
Denver, Colo.  
P. O. Box 195.

DENVER, COLO., AUG. 27, 1914.

Mr. R. T. Root,

Dear Sir:

If there is a possibility on earth for you to get your friend there to buy and carry these two mortgages, get him to do it at the earliest possible moment.

The Heirs are raising Cain, and I held the mortgages without being recorded to the last minute, but had to give them up and they are recorded. If you can get some one to carry them temporarily for you do it by all means. If the mortgages are taken up that day note can be taken care of, and the securities taken out of the Bank. Then I think the Lowery loan can be strung along some way. But if this mortgages are not taken up there will be the worst trouble here for me you ever saw, and these heirs will bring you here to face the music too. The Court said it would lie with the heirs.

Surely you can get some one to carry the paper temporarily with all that property clear excepting taxes. The matter has been already investigated and there is a letter from the County Clerk & Recorder of Mohave County stating the property was



conveyed by deed dated 1905, & recorded in 1910 from David H. Moffatt & Francis Moffatt to the Norma Mining Co.; that there are no liens or encumbrances of record or no suits pending at the time. This letter is similar to an abstract and ought to help. I fear I cannot do anything here, no one would touch it with the taxes unpaid.

It will save me and yourself if you get a buyer there at once to carry it temporarily. If you cannot it will ruin me and likely yourself as these heirs are wild over their money. [198]

Hoping you wont leave a stone unturned, I am

Truly yours,

HUGH MACKAY.

Had you stayed away from Mr. Wiberg he would have done as he agreed, but your desired confidential talk did not strike him right. Let me know in some way at once if you can do anything as I am terribly worried and have reason to.

H. M.

Marked Defts. Ex. #28. Admitted and Filed Aug. 24, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. [199]

**Defendant's Exhibit 30—Check, September 2, 1911,  
Root to Mackay.**

DENVER, COLO., SEPT. 2d, 1911. No. —  
FIRST NATIONAL BANK.

Pay to the order of HUGH MACKAY, EX.,  
\$4,500.00 FOUR THOUSAND FIVE HUNDRED  
DOLLARS.

R. T. ROOT.

(Written across face of check:)

This check return and cancelled June 9/13.

(Notation on back of check:)

Marked Defts. Exhibit #30. Admitted and filed  
Aug. 25, 1915. George W. Lewis, Clerk. By Effie  
D. Botts, Deputy. E-6-Prescott. Hugh Mackay  
vs. Norma Mining Company. [200]

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**Defendant's Exhibit 31—Letter, September 2, 1911,  
Root to Mackay.**

SEPT. 2nd, 1911.

Mr. Hugh Mackay,  
Denver, Colo.

Dear Sir:

I would like to get \$4500.00 temporarily, can you let me have it from your Millers' Estate? I can return it in from 10 to 20 days and will give you my check to hold and pay 8% int. I will give you a deed of a piece of property, which cost me over \$20,000.00 cash, for you to hold as security. If you should need the money sooner for some permanent investment I

will provide for payment of the check on short notice.

Yours truly,

R. T. ROOT.

Marked Defts. Exhibit #31. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [201]

**Defendant's Exhibit 32—Receipt, June 9, 1913,  
Mackay to Root.**

HUGH MACKAY,  
401 Exchange Building,  
Denver, Colo.  
P. O. Box 195.

		DENVER, COLO.,	191—
Sept. 2, 1911.	Dem. Loan Miller Est. 7%		\$500.00
	Int. on same to June 5th, 1913,	\$61.55	
" 5, "	Dem. loan M. Est. 7%		1550.00
	Int. on same to June 5, 1913,	189.88	
" 12, "	Dem. loan M. Est. 7%		500.00
	Int. on same to June 5, 1913,	60.58	
" 13, "	Dem. loan M. Est.		370.00
	Int. on same to June 5, 1913,	44.72	
" 18, "	Dem. loan Miller Est.		500.00
	Int. on same to June 5, 1913,	60.00	
Oct. 12, "	Dem. loan M. Est.		250.00
	Int. on same to June 5, 1913,	28.83	
Nov. 11, "	Dem. loan Miller Est.		550.00
	Int. on same to June 1, 1913,	60.32	
" 13, "	Dem. loan M. Est.		150.00
	Int. to June 1, 1913,	16.42	
" 14, "	Dem. loan Miller Est.		85.00
	Int. on same to June 5, 1913,	9.42	
			<hr/>
			4455.00 Pr.
		531.72	531.72
			<hr/>
			\$4986.72



June 9th, 1913.

Denver, Colo., June 9th, 1913.

Received from R. T. Root one check covering the amounts stated within; together with interest on same to June 5, 1913, and amounting to \$4986.72, with the understanding that Mr. Root will arrange for the payment of this check upon short notice, as provided in memorandum accompanying deed of Sept. 2, 1911, in this matter.

HUGH MACKAY, Es.

Defts. Exhibit #32. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [202]

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**Defendant's Exhibit 33—Letter, April 18, 1914,  
Mackay to Root.**

HUGH MACKAY,  
#402 Exchange Building,  
Denver, Colo.

P. O. Box 195.

DENVER, COLO., Apr. 18th, 1914.

Mr. R. T. Root,  
Dear Sir:

I went up to Cheyenne, Wyo., and arranged to get \$2000.00 less the discount of \$125.00 for 30 days. The only way I could get the money was by selling to a Mr. Richardson 1/64 of the schooner Gov. Brooks and 2/64ths of the Wyoming, enrolled vessels at Bath, Me., the bills of sale of transfer of said interests to be recorded at Bath, Me., before I should

receive the money less the discount charged. In return I received an option granting me the right to purchase back said interests for the sum of \$2025.00 to be paid on or before May 10th, 1914, after that date option to be void.

This is a dangerous matter for me because if I fail to purchase by May 10, I lose my interests that are worth over \$7000.00. However, if you have to have the money, and that you can pay back \$2025.00 on or before May 10th, 1914, I will pay you \$1900.00 on or before Wednesday forenoon providing you agree that should you fail to pay the \$2025 on or before May 10th, 1914, you will upon demand thereafter pay me the sum of Seven Thousand Dollars (\$7000.00) the value of the interests which I should lose should you fail to pay the \$2025 on or before May 10th to enable my purchasing back said interests. If you agree to the proposition wire me direct saying I agree to proposition in your letter of Eighteenth, and the money will be paid, and unless you do I will not risk it.

Truly yours,

HUGH MACKAY.

Marked Defts. Exhibit #32. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [203]

**Defendant's Exhibit 34—Letter, July 21, 1913,  
Mackay to Root.**

HUGH MACKAY,  
401 Exchange Building.  
Denver, Colo.

P. O. Box 195.

DENVER, COLO. JULY 21, 1913.

R. T. Root, Esqr.  
Denver, Colo.

Dear Mr. Root:

Although I believe it unnecessary to write you at this time, yet I take the opportunity of advising you, that owing to my instructions by the County Court, and the pressing demands upon me as Executor, by the heirs of the Estate of George Miller, Dec., requiring that I immediately file a report, and pay pro rata to the heirs, the sum of \$10,000.00. I will be compelled to deposit in the First Nat. Bank of Denver to the credit of said Estate on Wednesday, July 30th, all checks given by you in payment of demand loans and payable at the Colo. Nat. Bank. The requirements upon me now owing to prolonged delays heretofore are imperative, and I must and shall act as above stated, unless I am requested by you to make the deposit mentioned at an earlier date than stated.

Respectfully Yours,

HUGH MACKAY,  
Executor.



Marked Defts. Exhibit #34. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [204]

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**Defendant's Exhibit 35—Letter, July 24, 1913,  
Root to Mackay.**

R. T. Root,  
Box 114, Denver, Colo.

Denver, Colo., July 24, 1913.

Mr. Hugh Mackay,  
Denver, Colo.

Dear Mr. Mackay:

Yours of 21st inst. is received. I regret exceedingly I have not yet received the money to take up the checks which you refer to—but I shall try to get it by or before the date which you state in your letter you want it—and as you know I have arranged to start to California and expect to meet you there before the 30th inst., therefore I will not send the money to the Bank on which the checks were drawn, but as soon as I get it I will pay it over to you personally—and if I do not have it on that date I will get it just as quickly thereafter as possible and pay it to you—therefore please don't take the checks to the Bank referred to or to any other bank at all as I will pay the money to you direct and it will not be in the Bank at all.

If there was any mistake or error in the account for which the checks were given I will correct it, but as yet have not personally had time to look it over—

however this will not make any difference as I will pay the amount over to you as quickly as possible and if there are any errors we can correct them after. Trusting this arrangement for paying the money direct to you will be satisfactory, I am

Very truly Yours,

R. T. ROOT.

Marked Plffs. Exhibit "G" for identification. Marked Defts. Exhibit #35. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [205]

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**Defendant's Exhibit 36—Letter, August 1, 1913,  
Mackay to Root.**

HOLLENBECK HOTEL,

Los Angeles, Calif., Aug. 1, 1913.

Dear Mr. Root:

I shall leave this P. M. for Denver. I consider my presence there absolutely necessary within three days, on account of my replies to letters two weeks ago.

Any arrangement you wish to make please have it in shape by 4 P. M.

Truly Yours,

HUGH MACKAY.

Marked Defts. Exhibit #36. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co. [206]

*In the District Court of the United States for the  
District of Arizona.*

IN EQUITY.

#E-6-PRESCOTT.

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Petition for Appeal.**

To the Honorable W. B. GILBERT, Judge of the  
Circuit Court of Appeals.

The above-named, The Norma Mining Company, feeling aggrieved by the decree rendered and entered in the above-entitled cause, on the 18th day of March, 1916, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and it prays that its appeal be allowed and that citation be issued as provided by law and that a transcript of the record proceedings and documents, upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such court in such cases made and provided; and your petitioner further prays that the proper order relating to the required security to be required of it, be made.

RICHARD E. SLOAN,

Solicitor and Counsel for Appellant.



[Endorsements]: In the District Court of the United States for the District of Arizona. Hugh Mackay, Plaintiff, vs. The Norma Mining Company, Defendant. In Equity. E-6-Prescott. #E-23-Phoenix. Filed May 26, 1916, at — M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. Richard E. Sloan, Attorney. [207]

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*In the District Court of the United States for the  
District of Arizona.*

IN EQUITY #E-6-PRESCOTT.

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Order Allowing Appeal.**

On motion of Richard E. Sloan, Esq., solicitor and counsel for complainant, it is hereby ordered that an appeal to the Circuit Court of Appeals for the Ninth Circuit, from the decree heretofore filed and entered herein, be, and the same is hereby, allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the bond on appeal be fixed at the sum of Six Thousand Dollars, the same to act as a supersedeas bond, and also for a bond for

costs and damages on appeal said bond to be filed on or before June 15, 1916.

Dated May 23, 1916.

WM. B. GILBERT,  
Judge of Circuit Court of Appeals.

[Endorsements]: In the District Court of the United States for the District of Arizona. Hugh Mackay, Plaintiff, vs. The Norma Mining Company, Defendant. In Equity. #E-6-Prescott. E-33-Phoenix. Richard E. Sloan, Attorney. Filed May 26, 1916, at — M., Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [208]

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. E-33 (PHX.)

HUGH MACKAY,

Plaintiff,

vs.

NORMA MINING CO.,

Defendant.

**Order Extending Time to July 1, 1916, to Give  
Supersedeas Bond.**

IT IS ORDERED that the time of the defendant in the above-entitled cause to give a supersedeas bond be extended until July 1, 1916.

Dated June 14, 1916.

WM. B. GILBERT,  
Circuit Judge. [209]

**Order Extending Time to File Supersedeas Bond.**  
**TELEGRAM.**

A42GSMO 28 Govt

B Portland Ore 935AM June 30 1916.

Clerk United States District Court,  
Phoenix, Az.

Time to file supersedeas bond in Mackay versus  
Norma Mining Company is ordered extended ten  
days.

WM. B. GILBERT,  
U. S. Circuit Judge,  
10:55 A. M. [210]

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*In the District Court of the United States for the  
District of Arizona.*

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Supersedeas Bond.**

Know all men by these presents that we, The  
Norma Mining Company, a corporation, as principal,  
and W. E. Frost, Anson H. Smith, and G. T. Duncan  
as sureties, are held and firmly bound unto Hugh  
Mackay, the above named plaintiff, in the sum of  
Six Thousand Dollars lawful money of the United  
States, to be paid to him and unto his heirs, executors,  
administrators, and assigns; to which payment well



and truly to be made we bind ourselves and each of us, our heirs, executors, administrators, and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 29th day of June 1916.

Whereas, the above named, The Norma Mining Company, has prosecuted an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the decree of the District Court for the District of Arizona in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above named, The Norma Mining Company, shall prosecute its said appeal to effect and shall answer all damages and costs if it fail to make its plea good, then this [211] obligation shall be void; otherwise to remain in full force and effect.

[Seal of the Norma Mining Co.]

THE NORMA MINING COMPANY.

By R. T. ROOT,  
President.

W. E. FROST.

ANSON H. SMITH.

G. T. DUNCAN.

State of Arizona,  
County of Mohave,—ss.

On the 6th day of July, 1916, personally appeared before me W. E. FROST, known to me to be the person described in and duly executed the foregoing instrument a party thereto, and acknowledged that he executed the same as his free act and deed for the purposes therein set forth.

And the said W. E. FROST, being by me duly sworn, says that he is a resident and householder of the said County of Mohave, State of Arizona, and that he is worth the sum of \*\$6000.00 Six Thousand Dollars (\$6000.00) over and above his just debts and legal liability and property exempt from execution.

\*(Notation at side of page:) Figures changed from \$3000.00 to \$6000.00 before acknowledgment.

I. J. Whitney.

(Signed) W. E. FROST.

Subscribed and sworn to before me this 6th day of July, 1916.

[Seal]

I. J. WHITNEY,  
Notary Public.

State of Arizona,  
County of Mohave,—ss.

On the 6th day of July, 1916, personally appeared before me, ANSON H. SMITH, known to me to be the person described in and duly executed the foregoing instrument a party thereto, and acknowledged that he executed the same as his free act and deed for the purposes therein set forth.

And the said ANSON H. SMITH, being by me duly sworn, says that he is a resident and householder of the said County of Mohave and that he is worth the sum of \$1000.00 over and above his just debts and legal liability and property exempt from execution.

ANSON H. SMITH.

Subscribed and sworn to before me this 6th day of July, 1916.

I. J. WHITNEY,  
Notary Public. [212]

State of Arizona,  
County of Mohave,—ss.

On the 14th day of July, 1916, personally appeared before me G. T. DUNCAN, known to me to be the person described in and duly executed the foregoing instrument a party thereto, and acknowledged that he executed the same as his free act and deed for the purpose therein set forth.

And the said G. T. Duncan, being by me duly sworn, says that he is a resident and householder of the said County of Mohave and that he is worth the sum of \$6,000.00 over and above his just debts and legal liability and property exempt from execution.

G. T. DUNCAN,

Subscribed and sworn to before me this 14th day of July, 1916.

[Seal]

I. J. WHITNEY,  
Notary Public.

My Com. exp. Feb. 21, 1920.

State of Arizona,  
County of Mohave,—ss.

On the — day of —, 1916, personally appeared before me —, known to me to be the person described in and duly executed the foregoing instrument a party thereto, and acknowledged that he executed the same as his free act and deed for the purposes therein set forth.

And the said — being by me duly sworn, says that he is a resident and householder of the said



County of \_\_\_\_\_, and that he is worth the sum of \$\_\_\_\_\_, over and above his just debts and legal liability and property exempt from execution.

\_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 1916.

\_\_\_\_\_  
Notary Public.

State of \_\_\_\_\_,  
County of \_\_\_\_\_, —ss.

On the \_\_\_\_ day of \_\_\_\_\_, 1916, personally appeared before me \_\_\_\_\_, known to me to be the person described in and duly executed the foregoing instrument a party thereto, and acknowledged that he executed the same as his free act and deed for the purposes therein set forth.

And the said \_\_\_\_\_ being by me duly sworn, says that he is a resident and householder of the said County of \_\_\_\_\_, and that he is worth the sum of \$\_\_\_\_\_, over and above his just debts and legal liability and property exempt from execution.

\_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 1916.

\_\_\_\_\_  
Notary Public.

The foregoing bond is approved this 20th day of July, 1916.

WM. B. GILBERT,  
Circuit Judge. [213]

(Endorsements on back of cover of Supersedeas Bond:)

In the District Court of the United States for the District of Arizona. Hugh Mackay, Plaintiff, vs. The Norma Mining Company, Defendant. Supersedeas Bond. Filed Jul. 24, 1916. Mose Drachman, Clerk. By Ethel A. Webb, Deputy. Richard E. Sloan, Attorney. [214]

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**Order Extending Time to File Record and Docket Cause to November 11, 1916.**

**TELEGRAM.**

A34PGSMO 35 Collect Govt

Po San Francisco Calif 405PM Oct 30 1916

Clerk US District Court,

Phoenix, Az.

Order signed by Gilbert Circuit Judge and filed extending time to file record and docket cause Mackay versus Norma Mining Company to and including November eleventh.

**MONCKTON,**  
Clerk.

Filed Oct. 31, 1916. Mose Drachman, Clerk. By E. R. L. Webb, Deputy. [215]

*In the United States District Court for the District  
of Arizona.*

No. E-33 (PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

United States of America,  
District of Arizona,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing two hundred fifteen (215) typewritten pages, numbered from one (1) to two hundred fifteen (215), inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause, and as is stipulated for by counsel of record herein, as the same remain of record on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the decree of said United States District Court for the District of Arizona, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on be-



half of the plaintiff for the preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

[216]

Clerk's fee (Sec. 828 R. S. U. S. as Amended by Sec. 6, Act of March 2, 1905), for making typewritten transcript of record —600 folios at 30¢ per folio . . . . .	\$180.00
Certificate of Clerk to typewritten transcript of record, 4 folios at 30¢ per folio . . . . .	1.20
Seal to said Certificate . . . . .	.40
	<hr/>
	\$181.60

I hereby certify that the above cost for preparing and certifying record, amounting to one hundred eighty-one and 60/100 (\$181.60) dollars, has been paid to me by Richard E. Sloan, Esquire, one of counsel for the defendant herein.

I further certify that I hereto attach and herewith transmit the original citation in this cause.

WITNESS my hand and the Seal of said court, affixed this 9th day of November, A. D. 1916, at Phoenix, Arizona.

[Seal]

MOSE DRACHMAN,  
Clerk.

By R. E. L. Webb,  
Deputy Clerk. [217]

*In the United States Circuit Court of Appeals in  
and for the Ninth Circuit.*

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Citation on Appeal.**

The United States of America,—ss.  
To Hugh Mackay, Plaintiff, Greeting.

You are hereby cited and admonished to be and appear at the Circuit Court of Appeals of the United States for the Ninth Circuit, to be held at the City of San Francisco, State of California, on the first Monday of October, 1916, pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the District of Arizona, from a final decree signed, filed and entered on the 18th day of March, 1916, in that certain suit, being in equity No. E. 33-Phoenix, wherein you are plaintiff and The Norma Mining Company is defendant and appellant, to show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM B. GILBERT, Judge of the United States Circuit Court of

Appeals for the Ninth Circuit, this 20th day of July, 1916.

WM. B. GILBERT,  
Judge of the Circuit Court of Appeals, for the Ninth  
Circuit. [218]

[Endorsed]: In the United States Circuit Court of Appeals in and for the Ninth Circuit. Hugh Mackay, Plaintiff, vs. The Norma Mining Company, Defendant. Citation on Appeal. Received Service of Copy July 24, 1916, A. C. Baker. Filed Jul. 24, 1916, at — M. Mose Drachman, Clerk. By Ethel A. Webb, Deputy. [219]

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[Endorsed]: No. 2876. United States Circuit Court of Appeals for the Ninth Circuit. The Norma Mining Company, Appellant, vs. Hugh Mackay, Appellee. Transcript of the Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed November 13, 1916.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



**Plaintiff's Exhibit "K" for Identification—Check,  
March 18, 1914, Wells County Abstract & In-  
vestment Co. to Mackay.**

The Weld County Abstract  
& Investment Co.

FIRST NATIONAL BANK. NO. 59.

Greeley, Colorado, March 18th, 1914.

Pay to the order of HUGH MACKAY, EXEC-  
UTOR \$105.00 ONE HUNDRED FIVE and NO/100  
DOLLARS.

THE WELD COUNTY ABSTRACT & IN-  
VESTMENT CO.,

By W. P. ALLENPREST.

NOT OVER ONE HUNDRED TWENTY \$120\$.

(Endorsements on back of ~~note~~ check.)

Pay to R. T. ROOT,

HUGH MACKAY, Executor.

R. T. ROOT,

By H. M. ROOT.

23-56

Pay to the order of

DENVER NATIONAL BANK

All prior endorsements guaranteed

APR. 10, 1914.

THE GERMAN AMERICAN TRUST CO.

2

Denver, Colo.

2

6

Pay ANY BANK OR BANKER

or order

All Prior endorsements guaranteed

APR. 01, 1914.

DENVER NATIONAL BANK

23-7

Denver, Colo.

23-7

EDW. S. IRICH, Cashier.

(Notation.)

Marked Plff. Exhibit "K" for identification. Admitted and filed Aug. 25, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. E-6-Prescott. Hugh Mackay vs. Norma Mining Co.

[Endorsed]: Case No. 2876. U. S. Circuit Court of Appeals for the Ninth Circuit. Copy of Plaintiff's Exhibit "K," for Ident. Filed \_\_\_\_\_. Recd. Nov. 13, 1916. F. D. Monckton, Clerk.

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**Telegraphic Application and Order Extending Time to File Record and Docket Cause to and Including November 11, 1916.**

Received at Post Office Building, 7th and Mission  
Sts.

63SF WD 43GOVT

PHOENIX ARIZ 340POCT 30 1916.

HON WM B GILBERT

CIRCUIT JUDGE SAN FRANCISCO CALIF.

Owing to unusual amount work necessitated by present session court impossible file transcript of record case Hugh Mckay vs Nolma Mining Company by November first therefore request wire Ten days extension

Clerk U. S. District Court

303P

*United States Circuit Court of Appeals for the  
Ninth Circuit.*

NORMA MINING COMPANY,

Appellant,

vs.

HUGH MACKAY,

Appellee.

Upon telegraphic application of the clerk of the United States District Court for the District of Arizona, and good cause therefor appearing, it is hereby ORDERED that the time of the appellant to file the transcript of record and docket the above-entitled cause in this court be, and hereby is extended to and including November 11, 1916.

WM. B. GILBERT.

United States Circuit Judge.

Dated San Francisco, Cal., Oct. 30, 1916.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. The Norma Mining Company vs. Hugh Mackay. Telegraphic Application and Order Extending Time to File Record and Docket Cause to and Including Nov. 11, 1916. Filed Oct. 30, 1916. F. D. Monckton, Clerk.



*In the United States Circuit Court of Appeals in and  
for the Ninth Circuit.*

THE NORMA MINING COMPANY,

Appellant,

vs.

HUGH MACKAY,

Appellee,

State of Arizona,

County of Maricopa,—ss.

**Affidavit of R. T. Root.**

R. T. Root, being first duly sworn, deposes and says; That he is president of the Norma Mining Company, the appellant in the above-entitled cause, and was such at all the times hereinafter mentioned. That the only assets of said Company consist of the property described and set forth in the decree entered in the above-entitled court on the 18th day of March, 1916, and some personal property situate on the mining claims therein described. That said property is situate in a remote part of Mohave County, Arizona, about thirty miles from the nearest railroad station. That said property has not been worked or operated for several years last past. That the costs and expenses incident to the above-entitled suit has been borne by affiant and one or two other stockholders of said company. That the affiant and the other stockholders and the officers of the company have used their utmost efforts to raise the money needed to prosecute the appeal in said cause to the Circuit Court of Appeals, but owing to

the condition of the company's finances and of the company's property and the judgment against the same in said cause, and on account of the financial condition of the affiant and the other stockholders of the company, he was unable to raise the money needed to perfect the appeal until recently. That the officers of the company expected to receive assistance in raising the necessary funds to prosecute the appeal from the principal stockholder of the company, the only one who was financially able to render much assistance, but owing to illness said stockholder was unable to render such assistance, so that affiant was compelled to rely largely upon his own efforts and own resources which are limited.

Affiant further states that this appeal has been and is being prosecuted by the appellant in the utmost good faith and as rapidly as the means of the company will permit; that the abstract of the evidence has now been prepared and the precipe filed with the clerk of the court.

R. T. ROOT.

Subscribed and sworn to before me this 27th day of September, 1916.

[Seal]

E. G. SCOTT,  
Notary Public.

My commission expires June 7, 1920.

[Endorsed]: In the United States Circuit Court of Appeals in and for the Ninth Circuit. The Norma Mining Company, Appellant, vs. Hugh Mackay, Appellee, Affidavit. Filed Oct. 2, 1916. F. D. Monckton, Clerk.

*In the United States District Court for the District  
of Arizona.*

THE NORMA MINING COMPANY,

Appellant,

vs.

HUGH MACKAY,

Appellee.

**Order.**

Good cause appearing therefor it is hereby ordered that the appellant have until the 1st day of November, 1916, within which to perfect its appeal and to file or cause to be filed the transcript on appeal in the Circuit Court of Appeals for the Ninth Circuit.

WM. B. GILBERT,

Judge of the Circuit Court of Appeals, for the Ninth  
Circuit.

[Endorsed]: In the United States District Court for the District of Arizona. The Norma Mining Company, Appellant, vs. Hugh Mackay, Appellee. Order. Filed Oct. 2, 1916. F. D. Monckton, Clerk.

No. 2876. United States Circuit Court of Appeals for the Ninth Circuit. The Norma Mining Company, Appellant, vs. Hugh Mackay, Appellee. Orders Under Rule 16 Extending Time to File Record. Refiled Nov. 13, 1916. F. D. Monckton, Clerk.



*In the District Court of the United States for the  
District of Arizona.*

2876.

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Assignment of Errors.**

Now comes the defendant in the above-entitled cause and files the following Assignment of Errors upon which it will rely upon its prosecution of the appeal in the above-entitled cause from decree made by the United States District Court for the District of Arizona, on the 18th day of March, 1916.

I.

That the United States District Court, for the District of Arizona, erred upon the trial of said cause in admitting evidence for the plaintiff over the objection of the defendant as follows:

Under the pleadings, one of the issues was as to whether or not the defendant made, executed and delivered the mortgage deeds, bearing date the 2d day of August, 1913, and the 31st day of March, 1914, which said mortgages are referred to in the plaintiff's first and second cause of action, and which were sought to be foreclosed therein, it being claimed by the defendant in its answer that if said mortgage deeds were ever made, executed or delivered to the

plaintiff, such making, execution and delivery was unauthorized by the defendant company and without its knowledge or consent and without the knowledge or authority of the Board of Directors of the defendant company. In support of its said answer to plaintiff's complaint as to the making, execution and delivery of said mortgages, the defendant put in evidence the minute-book of the corporation, which shows that the Board of Directors of the defendant company at no time ever authorized the making, execution or delivery of said mortgages, or either of them, and that no action was taken by said corporation at any meeting of said Board of Directors authorizing or acquiescing in any way in such making, execution or delivery of said mortgages, or either of them. Whereupon, the defendant, in rebuttal of said testimony, called as a witness one, Frederick W. Lowry, who testified that he was a director of the defendant company at the dates of said mortgage deeds, and had prior thereto been a director of said company from the time of its organization, to wit, since 1907. That some time during the month of July, 1913, there was a meeting of the Board of Directors of the defendant company in the office of the witness, in the City of Denver, State of Colorado, at which said meeting a resolution was adopted authorizing a mortgage or mortgages to be issued to the plaintiff in any sum up to the extent of \$25,000, and reciting that the consideration that the company was to receive was to be the cancellation of certain indebtedness of the company to Mr. R. T. Root, President of the company, in an equal amount for whatever the

mortgages were issued, and that plaintiff, as Secretary of the corporation, afterward had the minutes of said meeting typewritten in his office and a carbon copy thereof afterward put in the minute-book of the company in the office of said R. T. Root, but that the witness did not have the directors sign these minutes at the time, and was not sure whether they were ever signed.

To the introduction of this testimony the counsel for the defendant objected upon the ground that the evidence was incompetent, immaterial and irrelevant, for the reason that the minute-book and records of the company were the best evidence of the action of the Board of Directors of the company, and in the absence of mistake or fraud in the entry of the minutes, were conclusive, and no mistake or fraud was ever alleged in the pleadings or shown by the evidence as a basis for the introduction of said proof, which said objections were by the Court overruled and an exception then and there taken to said ruling by defendant.

## II.

That the said District Court, upon the trial of said action, erred in the admission of evidence as follows: Upon the conclusion of plaintiff's rebuttal testimony, the Court made an order continuing the case to the 18th day of October, 1915, for the purpose, among other things, of permitting the defendant to produce the testimony of Walter W. Root, a director of the defendant company, relative to the alleged meeting of the Board of Directors in July, 1913, and to rebut the testimony of the witness Lowry as to the fact



of said meeting, and the adoption of a resolution authorizing the making, execution and delivery of the mortgages sued upon, and with the distinct understanding and agreement between the parties and under the order of the Court, that said testimony should be limited to matters relating to the said meeting of said Board of Directors; that at said adjourned hearing said Walter W. Root was produced as a witness and interrogated by said defendant as to said meeting, and that upon the cross-examination of said witness, counsel for the plaintiff asked the witness whether or not it was his signature that appeared upon one of the mortgages sued upon, as Secretary of the Company. Whereupon counsel for the defendant objected to such question upon the ground that the question did not relate to said meeting of Board of Directors in July, 1913, and was, therefore, not a matter which, under the stipulation and agreement as to the continuance of said cause, and the order of the Court, might be inquired into. Whereupon, the Court overruled said objection and permitted and directed the witness to answer said question, which answer was, that it was his signature upon said mortgage; to which said ruling of the Court, counsel for the defendant then and there excepted.

### III.

That the District Court erred in finding and decreeing that the notes and mortgages sued upon, or any of them, were valid obligations of the defendant company, for the reason that it is admitted by the pleadings that the said notes and mortgages were

executed and delivered by R. T. Root, President of the defendant company, provisionally and for the sole purpose of enabling the plaintiff to borrow money thereon. And the proof in the case wholly fails to show that then, or at any time thereafter, the defendant company ever received anything of value for or on account thereof, or that at any time it became bound by any of the terms and conditions of said notes and mortgages, or any or either of them, by any act or thing done by it.

#### IV.

That the said District Court erred in rendering its decree finding that the notes and mortgages sued upon were for a valuable consideration, executed and delivered to the plaintiff, and that there was due and owing by the defendant company to plaintiff any sum or sums whatsoever thereon, and in ordering the foreclosure of said mortgages, for the reason that the proof does not sustain such findings and decree, in this, that the proof does not show there was any consideration paid or in any way passed between plaintiff and defendant for the making, execution or delivery of said notes or mortgages, or either of them, and the said notes and mortgages were, therefore, *ultra vires*, and void.

#### V.

That the said District Court erred in rendering its decree finding that the notes and mortgages sued upon were executed and delivered to the plaintiff by the defendant company and that there was due and owing by the defendant company to plaintiff



any sum or sums whatsoever thereon, and in ordering the foreclosure of said mortgages for the reason that the proof does not sustain such findings and decree, in the respect that it shows that the making, execution and delivery of said notes and mortgages were unauthorized by the defendant company and without its knowledge or consent, and, therefore, by reason of the want of such authority, said notes and mortgages were never, and are not now, valid obligations of the defendant company.

## VI.

That the said District Court erred in finding that the mortgages sued upon were made, executed and delivered by the defendant or were authorized by the defendant company, in this, that the minute-book of the company put in evidence, shows that said mortgages, or either of them, were not authorized by the defendant company, and were not made, executed and delivered with the knowledge and consent of said company, and there was no legal evidence introduced to vary or contradict the record of said company in that behalf; the only evidence proffered and introduced by the plaintiff upon the trial being the oral testimony of the witness, Frederick W. Lowry, and of the plaintiff, Hugh Mackay, that a meeting of the Board of Directors of said Mining Company was held in July, 1913; the oral testimony of said Lowry that a resolution authorizing the issue of mortgages by the defendant company to an amount or amounts not exceeding \$25,000.00, to R. T. Root, President of the company, in liquidation and settlement of certain alleged indebtedness due and owing from the



defendant company to said Root, was adopted at said meeting, and that the minutes of the said meeting were not signed by any director or directors of the company, but that only a carbon copy of the draft of the minutes of said meeting was placed in the minute-book of the company; the testimony of one, Miss Saunders, that she recollected having seen certain of the directors of the company go into the office occupied by said Lowry about the time of the alleged meeting and thereafter having copied at the request of said Lowry a pencil memorandum of some kind made by said Lowry; and the further testimony of Elmer Sykes, an employee of the witness Lowry, that he recollected seeing Mr. R. T. Root and Mr. Hugh Mackay, go into the office occupied by said Lowry about the time of the alleged meeting of the Board of Directors; all of which testimony relating to the holding of said meeting being contradicted by the testimony of R. T. Root and Walter W. Root, directors of the defendant company, and by the records and minutes of said company showing the resignation of said Lowry as a director and Secretary of said company long prior to said alleged meeting.

#### VII.

That the said United States District Court erred in sustaining the objection upon the trial of the case to the 5th, 6th, and 13th interrogatory and the answers thereto, appearing in the deposition of Mrs. A. S. Root, a witness for the defendant, as follows: The said District Court, upon the application of defendant, after the cause had been partially tried, continued the case for the purpose of permitting, among

other things, the taking of the deposition of said witness. At the time when said continuance was had, the Court stated that he would permit the examination of said witness in rebuttal of the testimony of witnesses for the plaintiff as to certain conversations between said witnesses and Mrs. A. S. Root, relative to the execution and delivery of the notes and mortgages sued upon and as to an alleged meeting of the Board of Directors of the defendant company in July, 1913. The Court further ordered that the plaintiff might produce at said adjourned hearing, witnesses who should be examined solely as to said alleged meeting of said Board of Directors and that only witnesses who were present at said meeting and the witness, Miss Saunders, should be produced and examined in behalf of plaintiff; that thereafter interrogatories were filed for the taking of the deposition of said witness, Mrs. A. S. Root, to which said interrogatories no objection was made by the plaintiff and no cross-interrogatories filed by plaintiff, and the deposition of said witness was taken upon said interrogatories; that when said deposition was produced by the defendant and read, the interrogatory No. 5, which reads as follows, "State whether you ever had any knowledge or information of the execution of either or any mortgage of the Norma Mining Company property," and the answer thereto which reads, "No, I did not," and the further interrogatory No. 6 which reads, "Please state what interest, if any, you had in the Norma Mining Company," and the answer thereto which reads, "I have



all the interest except three (3) shares''; and the further interrogatory number 13 which reads, ''Was the company indebted to your husband, Mr. R. T. Root, in any amount,'' and the answer thereto which reads, ''No,'' were each of them objected to by counsel for plaintiff upon the sole ground that said interrogatories and the answers thereto did not relate to the alleged meeting of the Board of Directors of the defendant company in July, 1913, and to the alleged conversations between said witness, Mrs. Root and certain witnesses for the plaintiff in accordance with the order of the Court, permitting the taking of the deposition, which said objection was by the Court sustained and the said interrogatories and the answers thereto were ordered stricken from the deposition, to which said ruling counsel for the defendant then and there excepted. That said interrogatories and answers thereto and each of them were material and relevant to the issues in the case; that said order of said Court continuing said cause for an adjourned hearing was departed from and not adhered to on the motion of plaintiff and testimony other than that which said order by its terms allowed to be taken was introduced and heard by the Court, the testimony of one Elmer Sykes having been taken at said adjourned meeting, said witness not being one of those included in said order.

#### VIII.

That the said United States District Court erred in finding that there was due and owing on the note, dated August 2d, 1913, the sum of Eighteen Thousand Four Hundred Thirty-four and 66/100



(\$18,434.66) Dollars, for the reason that it was admitted by plaintiff that said note and the accompanying mortgage were executed and delivered by R. T. Root, then President of the defendant company, for the purpose of enabling plaintiff to borrow money thereon, and that if, as claimed by plaintiff, it was thereafter agreed that said note and mortgage should be held by plaintiff as security for an indebtedness of said R. T. Root, plaintiff, and admitting as claimed by plaintiff that the defendant company authorized the execution and delivery of said note and mortgage, still the proof shows that said indebtedness of said R. T. Root, plaintiff, aggregated about Ten Thousand and no/100 (\$10,000.00) Dollars, and no more, and no judgment therefor should have been rendered on said note and mortgage in excess of said sum of Ten Thousand and no/100 (\$10,000.00) Dollars, with interest thereon.

IX.

That the said United States District Court erred in finding that there was due and owing on the note and mortgage deed dated March 31st, 1914, Four Thousand Five Hundred Twenty-three and 43/100 (\$4,523.43) Dollars, for the reason that the proof shows that said note and mortgage were executed and delivered to plaintiff by R. T. Root, President of the defendant company for the purpose of enabling plaintiff to borrow money thereon, and that at the time of said execution and delivery, the defendant company was not indebted to plaintiff in any sum or sums whatsoever, and that thereafter the only con-

sideration received by said R. T. Root from plaintiff for said note and mortgage was the sum of Eighteen Hundred and no/100 (\$1800.00) Dollars, and that if the defendant company ever authorized the execution and delivery of said note and mortgage or ever became obligated to pay the same, there was not due and owing on said note and mortgage, at the time of the entry of the decree, any sum in excess of Eighteen Hundred and no/100 (\$1800.00) Dollars and interest on same.

X.

That the District Court erred in rendering its decree, for the reason that it is not sustained by the evidence in the case, but is contrary thereto.

XI.

That the said District Court erred in its decree ordering a deficiency judgment against the defendant company, for the reason that the evidence does not show any right to such deficiency judgment and does not show that there is any indebtedness due and owing from the defendant company to the plaintiff.

WHEREFORE, appellant prays that said decree be reversed and the said District Court for the District of Arizona be ordered to enter a decree reversing the lower court in said cause.

RICHARD E. SLOAN,

Solicitor and Atty. for Defendant.

[Endorsements]: In the District Court of the United States for the District of Arizona. Hugh Mackay, Plaintiff, vs. The Norma Mining Company, Defendant. Assignment of Errors. Filed May 26,

1916, at — M, Mose Drachman, Clerk. By R. E. L. Webb, Deputy. Richard E. Sloan, Attorney.

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*In the United States District Court for the District  
of Arizona.*

No. E-33 (PHX).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Certificate of Clerk U. S. District Court to  
Assignment of Errors.**

United States of America,  
District of Arizona,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing eleven typewritten pages, numbered from 1 to 11 inclusive, to be a full, true, correct and complete copy of the Assignment of Errors filed by the defendant in the above and foregoing entitled cause, with the petition for appeal and the order allowing the appeal in the above-entitled cause on the 26th day of May, 1916, as the same remains of record on file in the office of the Clerk of said District Court, and that the same constitutes a part of the record on appeal from the said United States District Court for the District of Arizona to the United States Circuit Court of Appeals for the Ninth Circuit.



I further certify that said Assignment of Errors was inadvertently omitted from the copy of the record in said cause heretofore certified to and transmitted by me to the said United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the costs for the preparation and certification of the typewritten transcript of said Assignment of Errors, amounting to Nine Dollars and Forty Cents (\$9.40), has been paid to me by Richard E. Sloan, Esq., one of counsel for defendant herein.

WITNESS my hand and Seal of said Court, affixed this 10th day of January, A. D. 1917, at Phoenix, Arizona.

[Seal]

MOSE DRACHMAN,  
Clerk.

By R. E. L. Webb,  
Deputy Clerk.

[Endorsed]: No. 2876. United States Circuit Court of Appeals for the Ninth Circuit. Certified Copy of Assignment of Errors. Filed Jan. 13, 1917. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the Ninth  
Circuit.*

No. 2876.

THE NORMA MINING COMPANY,

Appellant,

vs.

HUGH MACKAY,

Appellee.

**Stipulation for Correction of Printed Transcript of  
Record.**

It is hereby stipulated and agreed by and between Mr. Richard E. Sloan, attorney for Appellant, and Messrs, Baker & Baker and Messrs. Robinson & Robinson, attorneys for appellee, that the printed Transcript of Record herein, on page 30, may be corrected to show that R. T. Root was called for and by the defendant instead of the plaintiff, and that the same may be corrected by striking out the word "plaintiff" and inserting the word "defendant" in the 15th and 16th lines of said page, and, second, that said Record, on page 74, be corrected so as to show that the deal mentioned on said page did go through instead of as it now appears, "did not go through," by striking out the word "not" in the 13th line of said page 74.

RICHARD E. SLOAN,

Attorney for Appellant.

BAKER & BAKER,

ROBINSON & ROBINSON,

Attorneys for Appellee.

[Endorsed]: No. 2876. United States Circuit Court of Appeals for the Ninth Circuit. The Norma Mining Company, Appellant, vs. Hugh Mackay, Appellee. Stipulation for Correction of Printed Transcript of Record. Filed Feb. 19, 1917. F. D. Monckton, Clerk.

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*In the District Court of the United States for the  
District of Arizona.*

IN EQUITY.

No. E-33 (PHX.).

Transferred to Phoenix by Agreement of Parties.

HUGH MACKAY,

Complainant,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Reply.**

Comes now Hugh Mackay, complainant in the above cause, and replying to the amended answer and alleged counterclaim of The Norma Mining Company, defendant herein, says:

That saving and reserving all manner of exceptions to the uncertainties, imperfections and insufficiencies of the said amended answer and alleged counterclaim:

**FIRST.**

1. Denies that the notes and mortgages referred to in the complainant's bill of complaint, and in defendant's amended answer and alleged counter-



claim, were given to complainant for the accommodation of the said R. T. Root, or for the accommodation of any other person or corporation.

2. Denies that the said promissory notes or either of them, or the said mortgages or either of them, were executed or delivered by the defendant on the condition and understanding alleged in defendant's amended answer and alleged counterclaim, but alleges that they and each of them were delivered by the defendant to the plaintiff absolutely and without condition.

3. Denies that the said notes or either, or the said mortgages or either, were executed and delivered without the knowledge or authority of the directors and stockholders of the defendant company, and denies that said defendant received no consideration therefor.

4. Denies that the recitals of authority, or any other recitals in said mortgage, were or are contrary, as alleged in said amended answer and alleged counterclaim, to the real facts.

5. Denies that said R. T. Root, or the defendant company, or anyone in behalf of either of them, have ever offered to pay or have paid the sum of \$1800.00, or any other sum, upon either of said mortgages or the promissory notes secured thereby or for the return thereof, as alleged in said counterclaim, or at all.

6. That as to all the other matters stated and set forth in said amended answer and counterclaim, this complainant alleges that the same are eviden-

tial, immaterial and insufficient, and for that reason denies the same and each and every part thereof.

## SECOND.

For further reply to defendant's amended answer and alleged counterclaim, this complainant says:

1. That the said promissory notes described and referred to in the complainant's bill, together with the mortgages therein set out and described, were executed and delivered to the complainant by said defendant for a good and valuable consideration, and that they were so executed and delivered by the authority and with the consent of all the stockholders and all of the directors of the defendant company, and with full knowledge on the part of such stockholders and directors as to the consideration therefor, and that since the execution and delivery of said notes and mortgages, the said stockholders and directors have at all times prior to the commencement of this action, fully acquiesced in the execution and delivery of said notes and mortgages to this complainant, making no objection thereto until after the commencement of this action; and further, that all recitals contained in said promissory notes and mortgages are true.

2. That relying upon the said authority, consent, knowledge and acquiescence of all of said stockholders and directors, as to the promissory note and mortgage referred to in complainant's first cause of action set out in his said bill, and relying upon the representations of the defendant, its stockholders, officers and directors, with respect to the validity of such promissory note and mortgage, plaintiff was

induced to advance the money represented by the promissory notes set out and described in the second cause of action in complainant's bill, and relying upon the representations of the defendant, its officers, directors and stockholders that said promissory notes and mortgages described in complainant's bill herein were valid and binding obligations of the defendant, and would be paid in full by the defendant, complainant after the maturity of said promissory notes and mortgages, refrained from bringing suit to foreclose said mortgages until the commencement of this action, such delay in bringing this suit being at the request of said corporation, by and through its proper officer or officers.

WHEREFORE: Complainant prays that the said alleged counterclaim be dismissed and that the complainant have relief as prayed for in his original bill.

HUGH MACKAY,

Complainant.

A. C. BAKER,

A. B. BAKER,

Solicitors for Complainant.

317-318 Fleming Building, Phoenix,  
Arizona.

State of Colorado,

City and County of Denver,—ss.

Personally appeared before me the undersigned, a notary public in and for said City, County and State, Hugh Mackay, who being first duly sworn on oath says, that he is the complainant in the above-entitled case and has read the above and foregoing reply to the amended answer and counterclaim of



said The Norma Mining Company, defendant in said above-entitled case, and knows the contents thereof; that said reply is true.

Witness my hand and notarial seal this 30th day of March, 1915.

My commission expires March 20, 1919.

[Notary Seal]

GENEVIEVE GEGG,  
Notary Public.

*In the District Court of the United States for the  
District of Arizona.*

No. E-33 (PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Certificate of Clerk of United States District Court  
to Omissions From Record on Appeal.**

United States of America,  
District of Arizona,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing three typewritten pages, numbered from one to three, inclusive, to be a full, true, correct and complete copy of the plaintiff's reply to the amended answer of the defendant in the above-entitled cause filed by the plaintiff in the above and foregoing entitled cause, as the same remains of record on file in the office of the Clerk of said District Court, and that the same con-

stitutes a part of the record on appeal from the said United States District Court for the District of Arizona to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the said plaintiff's reply was inadvertently omitted from the copy of the record in said cause heretofore certified to and transmitted by me to the said United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the costs for the preparation and certification of the typewritten transcript of said plaintiff's reply, amounting to Three and 10/100 Dollars, has been paid to me by Alexander B. Baker, one of the counsel for the defendant herein.

WITNESS my hand and seal of said Court affixed this 17th day of February, A. D. 1917, at Phoenix, Arizona.

[Seal]

MOSE DRACHMAN,

Clerk.

By R. E. L. Webb,

Deputy Clerk.

[Endorsed]: No. 2876. United States Circuit Court of Appeals for the Ninth Circuit. Certified Copy of "Reply." Filed Feb. 19, 1917. F. D. Monckton, Clerk.

**Copy of Plaintiff's Exhibit "W," for Identification,  
page 151.**

Copy on typewriter.

One carbon copy.

**NORMA MINING CO.**

**Minutes of Special Stockholders' Meeting.**

A special meeting of the stockholders of The Norma Mining Co., was held in Denver, Colo., July —, 1913, by consent; notice waived, all shares being present.

The following resolution was adopted by unanimous vote:

Whereas: The Norma Mining Co. owes R. T. Root the sum of more than \$25,000, for moneys advanced and expended upon its White Hills, Arizona, property, and desires to secure and pay the same;

Resolved: That the officers of the Co. be and they are hereby authorized to issue and deliver to Hugh MacKay, at the request and for the account of R. T. Root, the note or notes of the Co. up to an aggregate of \$25,000, and to secure the same by mortgage or mortgages upon all of the mines and property of the Co. at White Hills, Mohave County, Arizona; that such notes and mortgages shall be of such dates and form and contain such terms and conditions as said R. T. Root and said MacKay may hereafter agree upon, and that said notes and mortgages, when executed, shall apply and be credited upon the indebtedness of the Co. to said Root, and said indebted-



ness cancelled to the extent of such notes and mortgages.

On motion, adjourned.

F. W. LOWERY, Secy.

### DIRECTORS' MEETING.

Immediately on adjournment of stockholders' meeting, the directors of The Norma Mining Co. met; notice being waived. Present, R. T. Root, F. W. Lowery and W. W. Root.

The resolution adopted at stockholders' meeting authorizing notes and mortgages of Co. to Hugh MacKay up to \$25,000, as set out in above minutes, was read; whereupon, on motion and unanimous ballot, said stockholders' resolution was adopted as a resolution of the board of directors. Adjourned.

F. W. LOWERY, Secy.

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_.

Directors.

*In the District Court of the United States for the  
District of Arizona.*

No. E-33 (PHX.).

HUGH MACKAY,

Plaintiff,

vs.

THE NORMA MINING COMPANY,

Defendant.

**Certificate of Clerk United States District Court to  
Omissions from Record on Appeal.**

United States of America,  
District of Arizona,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing two typewritten pages, numbered 1 and 2, to be a full, true, correct and complete copy of Plaintiff's Exhibit "W" admitted in evidence by the above-entitled court at the trial of the above-entitled cause and filed among the papers of said cause, as the same remains of record on file in the office of the Clerk of said District Court, and that the same constitutes a part of the record on appeal from the said United States District Court for the District of Arizona to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the said Plaintiff's Exhibit "W" was inadvertently omitted from the copy of the record in said cause heretofore certified to and transmitted by me to the said United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the costs for the preparation and certification of the typewritten transcript of said Plaintiff's Exhibit "W," amounting to One and 90/100 (\$1.90) Dollars, has been paid to me by Alexander B. Baker, one of the counsel for the defendant herein.

WITNESS my hand and seal of said Court affixed this 17th day of February, A. D. 1917, at Phoenix, Arizona.

[Seal]

MOSE DRACHMAN,  
Clerk.

By R. E. L. Webb,  
Deputy Clerk.

[Endorsed]: No. 2876. United States Circuit Court of Appeals for the Ninth Circuit. Certified Copy of Plaintiff's Exhibit "W" for Identification, Page 151. Filed Feb. 19, 1917. F. D. Monckton, Clerk.



